

STATUTE LAW OF NEW JERSEY

RELATIVE TO THE

# Shell Fish Industry

COMPILED UNDER AUTHORITY  
OF THE

Board of Shell Fisheries

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SEPTEMBER 1, 1918.

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NEW JERSEY REFORMATORY PRINT  
RAHWAY N. J.  
1918





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## Table of Cases Cited in Notes

---

ARNOLD v. MUNDY,	6 N. J. L. 1
ASSOCIATES, ETC. v. JERSEY CITY,	8 N. J. E. 715
BATEMAN v. HOLLINGER,	30 ATL. REP. 1107
BATEMAN v. POLHAMUS,	60 N. J. L. 163
BENNETT v. BOGGS,	BALD. 60 FED. CAS. 1319
BIRDSALL v. ROSE,	46 N. J. L. 361
BRADFORD v. DELUCA, ET. AL.,	90 N. J. L. 434
BROWN v. DEGROFF,	50 N. J. L. 409
CANAL CO. v. RAILROAD CO.,	16 N. J. E. 366
DAY v. COMPTON,	37 N. J. L. 514
DEGRAFF v. TRUESDALE,	10 N. J. L. 90
GOUGH v. BELL,	21 N. J. L. 156
GOUGH v. BELL,	22 N. J. L. 441
GOUGH v. BELL,	23 N. J. L. 624
GRACE v. WILLETS,	50 N. J. L. 414
HANEY v. COMPTON,	36 N. J. L. 507
HOWELL v. ROBB,	7 N. J. E. 17
JOHNSON v. LOPER,	46 N. J. L. 321
LEE v. STATE OF N. J.,	207 U. S. 67
MARTIN v. WADDELL,	18 N. J. L. 495
METZGER v. POST,	44 N. J. L. 74
MCCARTER v. OYSTER CO.,	78 N. J. L. 394
MCCREADY v. VIRGINIA,	94 U. S. 391
PAUL v. HAZELTON,	37 N. J. L. 106
POLHAMUS v. BATEMAN,	60 N. J. L. 163
POST v. MUNN,	4 N. J. L. *61
SHEPHARD v. LEVERSON,	2 N. J. L. 369
SMITH v. WILLETTS,	81 N. J. L. 371
STATE v. BOLLER,	47 FED. REP. 415
STATE v. CORSON,	65 N. J. L. 502
STATE v. CORSON,	67 N. J. L. 178
STATE v. HAND,	71 N. J. L. 137
STATE v. LEE,	70 N. J. L. 368
STATE v. LEE,	74 N. J. L. 852
STATE v. LEE,	207 U. S. 67
STATE v. NELSON,	65 N. J. L. 500
STATE v. PARKER,	57 N. J. L. 360
STATE v. POLHAMUS,	57 N. J. L. 348
STATE v. POST,	55 N. J. L. 264
STATE v. PRICE,	71 N. J. L. 249
STATE v. TAYLOR,	27 N. J. L. 117
STEVENS v. PATERSON R. R. CO.,	34 N. J. L. 532
STEVENS v. RAILROAD CO.,	20 N. J. E. 135
TOWNSEND v. BROWN,	24 N. J. L. 80
WELLER v. SNOVER,	42 N. J. L. 344
WOOLEY v. CAMPBELL,	37 N. J. L. 163
YARD v. CARMAN,	3 N. J. L. *943

## TABLE OF CONTENTS

---

	PAGE.
I. Act Creating Board of Shell Fisheries.....	5
II. Act Creating Bureau of Shell Fisheries.....	20
III. General Acts Relative to Clams and Oysters.....	22
IV. General Miscellaneous Acts.....	43
V. Acts Applicable to Delaware Bay, Delaware River, Maurice River Cove and Raritan Bay.....	62
VI. Acts Relating Exclusively to Atlantic County.....	79
VII. Acts Relating Exclusively to Ocean County.....	89
VIII. Acts Relating Exclusively to Shark River.....	98



STATUTE LAW OF NEW JERSEY RELATIVE  
TO THE  
SHELL FISH INDUSTRY.

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1. BOARD OF SHELL FISHERIES.

Chapter 387, Laws of 1915, p. 734.

AN ACT TO ESTABLISH A DEPARTMENT OF SHELL FISHERIES AND TO VEST THEREIN ALL THE POWERS AND DUTIES NOW DEVOLVED, BY LAW, UPON THE STATE BUREAU OF SHELL FISHERIES, THE STATE OYSTER COMMISSION, THE OYSTER COMMISSION FOR THE DISTRICT OF OCEAN COUNTY, THE OYSTER SUPERINTENDENT FOR THE DISTRICT OF OCEAN COUNTY, THE OYSTER COMMISSION FOR THE DISTRICT OF ATLANTIC COUNTY, THE OYSTER SUPERINTENDENT FOR THE DISTRICT OF ATLANTIC COUNTY, AND THE OYSTER AND CLAM COMMISSIONER OF THE DISTRICT OF SHARK RIVER IN THE COUNTY OF MONMOUTH.

1. BOARD OF SHELL FISHERIES ESTABLISHED.

Sec. 1. A department of shell fisheries is hereby established, and the same shall be governed by a board to be known as the "Board of Shell Fisheries."

2. CONSTITUTION OF BOARD.

Sec. 2. The Board of Shell Fisheries shall consist of eight members, not more than four of whom shall be members of the same political party, and all of whom shall be actually engaged in the shell fish industry as planters or shippers or as owners or lessees of land on which shell-fish are produced, and residents of counties located within the recognized oyster-producing section. At least three members of the Board shall be residents of the County of Cumberland and of the five

remaining members one shall be appointed from the County of Cape May, one from the County of Atlantic, one from the County of Burlington, one from the County of Ocean and one from the County of Monmouth.

### 3. APPOINTMENT. TERMS. VACANCIES. MEETINGS. PRESIDENT.

Sec. 3. The members of the Board of Shell Fisheries shall be appointed by the Governor, by and with the advice and consent of the Senate, for the following terms, to commence on the first day of July, one thousand nine hundred and fifteen; two for one year, two for two years, two for three years, and two for four years. Annually thereafter two members shall be appointed for a term of four years. Vacancies shall be filled for the unexpired terms. The board shall meet in the State House, in Trenton, at such times as its rules may prescribe in each and every month, and at such times and places within the state as, in its judgment, may be necessary. The board shall elect one of its members president who shall hold office for one year and until his successor shall be elected.

The members of the board shall receive no compensation for their services, but the State Treasurer shall, upon the warrant of the State Comptroller, pay their necessary expenses.

### 4. DIRECTOR. SALARY. TERM.

Sec. 4. The board shall select a person who shall be known as the "Director of Shell Fisheries," who shall be a resident of this state and a practical oysterman. In case the board cannot agree because of a tie vote therein, upon the selection of a director, the Governor shall be requested to sit with said board for the purpose of casting the deciding vote. Said Director of Shell Fisheries shall receive a salary of not more than two thousand dollars per annum, to be paid out of the treasury of this state as the salaries of other employees, are now, or may hereafter be, paid. He shall devote his entire time to the duties of his office, and shall serve for a term of three years, and until his successor has been appointed and qualified.



## 5. DEPARTMENTS. POWERS. DUTIES.

Sec. 5. The Board of Shell Fisheries shall be divided into two departments, one to be known as the department of the Maurice River Cove consisting of the members from the counties of Cumberland and Cape May, and the other to be known as the department of the Atlantic Coast, consisting of the members from the counties of Atlantic, Burlington, Ocean, and Monmouth.

A. The Board of Shell Fisheries shall succeed to and exercise all the powers and perform all the duties but no other than now exercised and performed by or conferred or discharged upon the State Bureau of Shell Fisheries.

B. The Department of the Maurice River Cove shall succeed to and exercise all the powers and perform all the duties but no other than now exercised and performed by or conferred or discharged upon the State Oyster Commission.

C. The Department of the Atlantic Coast shall succeed to and exercise all the powers and perform all the duties but no other than now exercised and performed by or conferred or discharged upon the Oyster Commission for the District of Ocean County, the Oyster Superintendent for the District of Ocean County, the Oyster Commission for the District of Atlantic County, the Oyster Superintendent for the District of Atlantic County, and the Oyster and Clam Commissioner of the District of Shark River in the County of Monmouth, in their respective districts.

## 6. SUB-DEPARTMENTS OR DIVISIONS.

Sec. 6. The Board of Shell Fisheries through its two departments, each independent of the other, shall also have power to create sub-departments or divisions, to take specific charge of the different lines of work contemplated in this act, and shall have power to appoint heads or chiefs of such sub-departments or divisions, at salaries to be fixed by said board.

## 7. CONTROL. SALARIES. REPORT.

Sec. 7. The Board of Shell Fisheries shall have full con-

trol and direction of the shell fish industry and of the protection of shell fish throughout the entire state. It shall make such rules and regulations as, in its opinion, may be necessary for the preservation and improvement of the shell fish industry of the state. It shall fix the salaries of all employees.

The Board of Shell Fisheries shall report annually to the Legislature.

#### 8. DIRECTOR-SECRETARY. POWERS. DUTIES.

Sec. 8. The Director of Shell Fisheries shall attend all meetings of the board, and shall be ex officio secretary of the board. He shall be subject to the rules and regulations of the board, and shall exercise general supervision over the shell fish industry of the state. He shall be and hereby is charged with the enforcement of all laws relating to such industry and of all rules and regulations made by the board. He shall obtain, collect and preserve such information relating to the shell fish industry as may be useful in the discharge of his duties or may contribute to the promotion of such industry. He may, and any person authorized by him so to do may, without fee or hindrance, enter, examine and survey all grounds used for the shell fish industry, and all boats, apparatus, buildings and structures used in connection therewith or in aid thereof.

#### 9. INVESTIGATION. WITNESSES.

Sec. 9. The Board of Shell Fisheries, by its presiding officer, each of its committees by their chairman and the Director of Shell Fisheries, shall have authority to administer oaths, and to examine under oath in any part of the State witnesses in any matter relating to shell fish or to the shell fish industry. For this purpose it may issue subpoenas, signed by its president and secretary, requiring the attendance of witnesses and the production of books and papers in any part of the State before it or before any of its committees or before the Director of Shell Fisheries, and any person who, being served with a subpoena issued pursuant to the provisions of this act, shall fail to attend or who shall fail to give testimony, unless such testimony incriminate him or subject him to a fine



or punishment, shall be liable to a penalty of five hundred dollars for each and every offense, to be recovered in the name of the State of New Jersey; said penalty, when recovered, to be paid into the Treasury of the State of New Jersey; and it shall be the duty of the Attorney-General to prosecute any and all actions for the recovery of penalties, when requested so to do, and when, in his judgment, the facts and the law warrant such prosecution. Any person who having been sworn by the presiding officer of the board, or the chairman of any of its committees, or by the Director of Shell Fisheries, wilfully gives false testimony, shall be guilty of perjury.

#### 10. REMOVAL OF DIRECTOR.

Sec. 10. The Director of Shell Fisheries may be removed by the Governor, after a hearing; *provided*, that charges against him have been submitted, in writing, signed by a majority of the members of the board; *and provided, further*, that the Governor finds such charges to be true in fact, and their nature such that, in his opinion, the best interest of the state demand the removal of said Director.

#### 11. APPOINTMENTS AND TENURE OF EMPLOYEES.

Sec. 11. All of the employees of the Department of Shell Fisheries shall be appointed and shall hold their position subject to the provisions of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this state, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight.

#### 12. CODIFICATION OF LAWS RELATING TO SHELL-FISH INDUSTRY.

Sec. 12. Immediately upon the organization and establishment of the Board of Shell Fisheries, it shall become the duty of the board to codify the various laws which have been passed, from time to time, relating to or concerning, in any way whatsoever, the shell fish industry of the state, or in any

way relating to the department before its present consolidation, which codification shall set forth, in a clear and comprehensive manner, the origin of the department, meaning, thereby, its creative act, after which shall follow, in their proper order, all existing acts amendatory thereof and supplementary thereto, and all acts relating to its consolidation (if any there has been) with any other board or boards, commission or commissions, department or departments. Said work of codification shall continue, from year to year, after the principle herein set forth, with the idea of preserving, in concrete form, the history and development, or evolution, so to speak, of the shell fish industry of this state, thereby contributing materially to a better and more comprehensive understanding of all laws relating thereto, and of the powers and duties devolved upon the department by said acts.

### 13. EXPLANATION OF TERMS.

Sec. 13. Whenever in any act the words, "the State Bureau of Shell Fisheries," "the State Oyster Commission," "the Oyster Commission for the District of Ocean County," "the Oyster Superintendent for the District of Ocean County," "the Oyster Commission for the District of Atlantic County," "the Oyster Superintendent for the District of Atlantic County," "the Oyster and Clam Commissioner for the District of Shark River in the County of Monmouth," "the Oyster Commission," "State Oyster Commission," "Oyster Superintendent," or "State Oyster Superintendent" are used, the same shall be taken to be and to mean the Board of Shell Fisheries.

### 14. RETENTION OF EMPLOYEES. MAY ABOLISH POSITIONS.

Sec. 14. The officers and employees now in the employ of the State Bureau of Shell Fisheries, the State Oyster Commission, the Oyster Commission for the District of Ocean County, the Oyster Superintendent for the District of Ocean County, the Oyster Commission for the District of Atlantic County, and the Oyster Superintendent of Atlantic County, and the Oyster and Clam Commissioner of the District of Shark River in the County of Monmouth, shall be retained



in their present offices or positions and shall continue as employees of the department of Shell Fisheries, unless removed in accordance with the provisions of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties," approved April tenth, one thousand nine hundred and eight. The Director of Shell Fisheries, however, may with the approval of the Board, abolish any office or position which, in his judgment, it may be unnecessary to retain.

#### 15. REPEALER. CONSTITUTIONALITY OF ACT.

Sec. 15. All acts and parts of acts inconsistent herewith be and the same are hereby repealed, and this act shall take effect on the first day of July, one thousand nine hundred and fifteen; *provided, however*, that if any section or parts thereof of this act shall be questioned in any court, and shall be held to be unconstitutional and void, the sections or parts thereof so declared to be invalid shall be excinded and the balance of the act shall stand as though said sections or parts thereof had never been included within the provisions of this act.

Approved April 23, 1915.

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### CHAPTER 116.

#### AN ACT RELATING TO THE PROPAGATION, PLANTING, PRESERVATION AND GATHERING OF CLAMS AND OYSTERS IN THE TIDAL WATERS OF THIS STATE, AND ENLARGING AND DEFINING THE POWERS AND DUTIES OF THE BOARD OF SHELL FISHERIES.

(Act of March 24, 1917, P. L. p. 250, as amended March 4, 1918, P. L. p. 781.)

#### 16. POWER TO LEASE LANDS UNDER WATER.

Sec. 1. The Board of Shell Fisheries shall have power to

lease to applicants therefor any of the lands of the state under the tidal waters thereof, to be exclusively used and enjoyed by such lessee for the planting and cultivating of oysters and clams; *provided, however*, that no lease or leases shall be hereafter granted to any person or persons who shall not be at the time of granting such lease or leases, and shall not have been for twelve months next preceding a citizen and actual resident of this state, but this restriction shall not apply to renewals of any lease or leases heretofore granted; *and provided, further*, that no lands shall be leased above the southwest line in the Delaware Bay, nor in any creeks tributary to Delaware Bay, nor any other lands under the waters of Delaware Bay, Raritan Bay, or Sandy Hook Bay, which by any existing law of this state it is not now made lawful to lease for such purposes, nor the beds at the mouth of the Tuckahoe and Great Egg Harbor Rivers, nor the graveling beds at the mouth of Mullica River, Parker's beds in Parker's Cove, Forked River beds, Cedar Creek beds and Sloop Creek beds in Barnegat Bay, nor Shrewsbury River and both branches thereof below Geuyon's Point, on the north branch, and Little Silver on the south branch.

NOTE.—In *Smith vs. Board of Shell Fisheries*, (June Term 1917, unreported), the Supreme Court refused to issue a writ of *mandamus* requiring the Board to grant a lease for oyster lands in Delaware Bay where the application for lease described a plot of ground containing 20 acres, more or less, situate about one-half mile southwesterly from the beacon light on Dead Man's Shoal, and the plot described in the application for *mandamus* was 180 acres, located about 2 miles southwesterly from said beacon light.

In *Bate vs. Board of Shell Fisheries*, (November Term 1917, unreported), the Supreme Court dismissed a writ of *certiorari* which removed leases made by the Board for lands under water in Delaware Bay. Prosecutor claimed that the lands leased were natural clam grounds and that the Board had no power to lease them. The Court held that the leased lands were not, nor had been, natural clam grounds.

## 17. PERIOD OF RENTALS.

Sec. 2. The Board of Shell Fisheries shall fix and determine the term for which leases may be granted, not exceeding thirty years, the rental to be paid for the grounds described therein, the maximum size of any single ground to be hereafter leased, and the total acreage which may be hereafter leased to any person or persons.



**18. LEASED LANDS TO BE MEASURED AND MAPPED. LEASES AND TRANSFERS TO BE RECORDED.**

Sec. 3. The Board of Shell Fisheries shall, from time to time, cause the lands leased as aforesaid to be measured, and the metes and bounds thereof ascertained and located by ranges, monuments or other means, so that the limits of the lands embraced within such leases may be accurately fixed and easily located; the Board of Shell Fisheries shall cause such leased lands to be mapped, and the said maps to be filed in the office of the Board of Shell Fisheries and copies thereof to be filed in the office of the Department of the Maurice River Cove, and the offices of the Department or Divisions of the Atlantic Coast, respectively, and shall also cause the leases so made and assignments and transfers thereof to be recorded in books kept in the offices of said departments or divisions, respectively; and no assignment or transfer of any ground or lease therefor shall be valid unless the same be approved by the Board of Shell Fisheries and forthwith recorded in the office of the department or division in which the leased land is located; the expense of surveying, measuring, locating and mapping any ground or grounds to be paid by the applicant therefor before he shall be entitled to a lease or leases for the same.

**19. OATH PRESCRIBED FOR APPLICANT.**

Sec. 4. The Board of Shell Fisheries before issuing any lease to any person as provided for in this act, and before approving any assignment of a lease, shall cause the person applying for such lease or for approval of an assignment thereof, to make and file with them an oath that he is a citizen and actual resident of this State, and has been such citizen and actual resident for twelve months next preceding said application.

**20. TAKING OYSTERS AND CLAMS FROM SPAWNING GROUND.**

Sec. 5. Any person who shall catch or take oysters or clams from any of the natural oyster beds or grounds men-

tioned in section one of this act, where oysters naturally spawn and grow under the tidal waters of this state, except during the months of May and June, and then between sunrise and sunset only, shall be guilty of a misdemeanor; *provided*, that this section shall not apply to the beds, creeks and rivers named in section nine of this act nor Raritan Bay or Sandy Hook Bay nor in the Mullica River north of Deep Point; Mott's Creek and Oyster Creek in Atlantic county; Cedar Creek, Clam Creek and Potter's Creek in Ocean county, and Shark River and Shrewsbury River and both branches thereof in Monmouth county.

#### 21. TONGERS' LICENSES. CONDITIONS. FEE. NUMBER.

Sec. 6. No person shall catch or take oysters or clams by means of tongs, rakes or forks from any of the natural oyster or clam grounds in the waters of this state, without first obtaining a license from the Board of Shell Fisheries and paying therefor a license fee to be fixed by said Board of Shell Fisheries, from time to time, at a sum not less than two dollars and fifty cents or more than ten dollars; each license so granted shall be for the term of one year from the first day of January of the year of issue, and shall be under the hand and seal of a chief of one of the departments or divisions of said Board of Shell Fisheries; each license so granted shall be numbered and shall state the name and residence of the persons to whom the same is granted, and a record thereof shall be kept by said chiefs of departments and divisions, respectively. Each person so licensed shall, at all times while engaged in operating under such license, display in plain view upon the port bow of his boat the number of such license in black figures at least five inches in length and one inch in width, and shall have such license on his person and shall exhibit the same for inspection to any member of said Board of Shell Fisheries or any officer or employee thereof, or other person requesting to see the same; *provided*, that this section shall not apply to the seaboard waters of Atlantic, Cape May and Ocean counties for the catching of clams on grounds set apart for that purpose. Any person violating the provisions of this section shall be guilty of a misdemeanor.



## 22. CITIZENSHIP OF APPLICANT. PRIVILEGE GRANTED BY LICENSE.

Sec. 7. Said Board of Shell Fisheries are hereby authorized to grant such license to any applicant upon presentation of satisfactory evidence that said applicant is a citizen of this state and has been a citizen and actual resident of this state for a period of twelve months next preceding the date of said application, and upon the payment of the license fee so fixed as aforesaid by said Board of Shell Fisheries, which license shall grant to the applicant the privilege of taking oysters or clams upon any natural oyster bed or clam ground of this state, except such as may be reserved for leasing purposes by said Board of Shell Fisheries, under this act or under any other existing law of this state.

## 23. CERTAIN PROCESSES OF TAKING FORBIDDEN.

Sec. 8. It shall be unlawful for any person or persons to use, or cause to be used, any dredge with bag or pocket, drag or scrape upon any of the natural oyster or clam beds under the tidal waters of the Atlantic seaboard of the State of New Jersey and tributaries thereto, except Delaware Bay, and no license shall be issued by the Board of Shell Fisheries contrary to the provisions of this section; *provided, however*, that this shall not be held to prohibit the use of any fork, hoe or drag used by hand in the taking of soft clams; *and provided, further*, that this section shall not prohibit the catching of oysters with hand-power dredges from the natural oyster grounds of this state north of Shrewsbury river; any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor.

## 24. WHERE HAND-TONGS TO BE USED.

Sec. 9. It shall be unlawful for any person or persons to use, or cause to be used, any dredge, drag, scrape or other instrument, except hand-tongs, for the purpose of catching oysters from the following-named beds, creeks and rivers of the State of New Jersey, along the shore of Delaware Bay, viz.: Elder Point beds, Andrews ditch beds, East Point beds,

the High beds, Pepper beds, Dividing creek beds, Oronoken beds, Nantuxet Creek beds, Beach Creek beds, Goshon Creek, Dennis Creek, East Creek, West Creek, Dividing Creek, Oronoken Creek, Straight Creek, Fishing Creek, Oyster Creek, Fortescue Creek, Beaden's Creek, Sow and Pigs Creek, Dare's Creek, Padgett's Creek, Nantuxet Creek, Cedar Creek, Back Creek, Middle Marsh Creek, Stow Creek, Bidwell's ditch, Nantuxet beds at the mouth of Nantuxet Creek, Back Creek beds at the mouth of Back Creek, Cohansey beds at the mouth of Cohansey River, and Maurice River and Cohansey River; and no license shall be issued by the Board of Shell Fisheries contrary to the provisions of this section; any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

**25. CLOSED SEASON.**

Sec. 10. It shall be unlawful for any person or persons to gather, scrape, rake or tong any oysters in or upon the beds, rivers or creeks of the State of New Jersey named in section nine of this act for and during the period from the thirtieth day of June until the first day of September in each and every year; *provided*, this section shall not apply to the beds at the mouth of and in Maurice River, from which it shall be lawful to take oysters between sunrise and sunset at any time.

**26. WORKING ON LEASED GROUND WITHOUT PERMISSION;  
MISDEMEANOR.**

Sec. 11. Any person or persons who shall hereafter go upon, take or remove any oysters, clams or other material, dredge upon, throw, cast or drag an oyster dredge or use oyster tongs, rakes, forks or any other instrument or appliance used for catching oysters or clams, or shall tread for clams, upon any of the leased lands of the state lying under the tidewaters of the Atlantic seaboard, or tributaries thereof, above Cape May Point of the State of New Jersey other than land or ground for which such person then holds a lease from the Board of Shell Fisheries or under the employ of such lessee, shall be guilty of a misdemeanor.



**27. ROUGH CULL LAW.**

Sec. 12. All oysters, oyster shells and other material dredged, tonged or in any manner raised or taken from any of the beds and grounds above what is known as the southwest line in Delaware Bay, or from any natural oyster bed or ground, shell bed or reef, where oysters naturally spawn and grow under the tidal waters of the State of New Jersey, shall be culled as soon as the same are emptied out of the tongs or dredges on the culling board or deck of the boat or vessel employed for the purpose, and before the same are shoveled back from the culling board or portion of the deck used for emptying the tongs or dredges; and all shells and other material, except oysters and clams, shall be immediately thrown back upon the beds or grounds from which the same shall have been taken; all such oysters, oyster shells and other material shall be culled as aforesaid so closely that three bushels thereof taken from any portion of a deck load of oysters, after the same shall have been shoveled back from the culling board or that part of the deck used for emptying the tongs and dredges aforesaid, shall not contain more than fifteen per centum of shells and other material; and if any person or persons shall neglect or refuse to cull as aforesaid all such oysters, oyster shells and other material, he or they shall be guilty of a misdemeanor; when the master, commander, captain or person in charge of any boat, vessel or other craft licensed under the provisions of this or any other act to engage in the business of catching or taking oysters from the waters of this State, or any person holding a tonger's license, is hailed, or signaled by any officer of the Board of Shell Fisheries and refuses to stop and permit any officer or officers of said Board of Shell Fisheries to board his or their boat, vessel or other craft and examine the oysters, oyster shells and other material on such boat, vessel or other craft as aforesaid, the said Board of Shell Fisheries shall have power to revoke the license of such boat, vessel or other craft and revoke the license of the tonger so refusing as aforesaid.

**28. SUNDRY ACTS REPEALED.**

Sec. 13. The following acts and parts of acts are hereby repealed:

(1) An act entitled "An act to promote the propagation and cultivation of seed oysters, and to protect the natural oyster seed grounds of this state," approved March twenty-first, one thousand eight hundred and ninety-nine (P. L., p. 160).

(2) An act entitled "An act for the better preservation of the oyster industry in the creeks and rivers along the shores of Delaware Bay and Maurice River Cove and the tidewaters of the Atlantic seaboard of the State of New Jersey," approved March twenty-third, one thousand nine hundred (P. L., p. 475).

(3) An act entitled "An act for the better protection and preservation of the oyster industry in the creeks and rivers along the shores of Delaware Bay and Maurice River Cove," approved May eleventh, one thousand eight hundred and ninety-seven (P. L., p. 355), and the amendment thereof, approved March twenty-third, one thousand eight hundred and ninety-nine (P. L., p. 265).

(4) An act entitled "An act to amend an act entitled 'A supplement to an act entitled "An act for the preservation of clams and oysters" (Revision), approved April fourteenth, one thousand, eight hundred and forty-six,' which said supplement was approved April eleventh, one thousand eight hundred and ninety-four" (P. L., p. 333), and the amendment thereof, approved March twenty-fourth, one thousand eight hundred and ninety-nine (P. L., p. 333).

(5) An act entitled "An act to protect the planting and cultivating of oysters in the tidewaters of the county of Ocean," approved May eleventh, one thousand eight hundred and eighty-six (P. L., p. 343).

(6) An act entitled "An act for the regulation, protection and control of the planting, cultivating and gathering or taking of oysters and clams on lands covered with water in Shark River, in the county of Monmouth," approved March seventh, one thousand nine hundred and five (P. L., p. 27).

(7) All acts and parts of acts inconsistent herewith are hereby repealed.



**29. CLAMS AND OYSTERS TO BE TAKEN BY DAYLIGHT ONLY.**

Supplement approved March 4, 1918, Chapter 216, *P. L. p. 780.*

Sec. 1. It shall be unlawful to take or catch or to assist in taking or catching any clams or oysters from any of the lands lying under the tidal waters of this state before sunrise or after sunset.

**30. PENALTY.**

Supplement approved March 4, 1918, Chapter 216, *P. L. p. 780.*

Sec. 2. Any person violating the provisions of this act shall be guilty of a misdemeanor.

**31. POWER TO LEASE CERTAIN CONDEMNED LAND.**

Amendment approved March 4, 1918, *P. L. p. 995.*

Sec. 1. The Board of Shell Fisheries shall have power to lease to applicants therefor any of the lands of this state that have been or may hereafter be condemned by the State Department of Health in accordance with the provisions of Chapter 24, *P. L. 1912.*

**32. REMOVAL OF SHELL-FISH. BOND REQUIRED.**

Amendment approved March 4, 1918, *P. L. p. 995.*

Sec. 2. The Board of Shell Fisheries shall have power to make such rules and regulations (not inconsistent with the regulations of the State Department of Health) for the removal and distribution of shell fish from the said leased grounds as in their judgment will be in thorough accord with the object for which the said grounds were condemned, and may require the lessee to give bond in a sum not to exceed ten thousand dollars for the faithful observance of such rules and regulations.

## II. BUREAU OF SHELL FISHERIES.

Act of April 14, 1903, *P. L. p. 709*, amended April 30, 1907, *P. L. p. 271* and April 27, 1911, *P. L. p. 591*.

## 33. BUREAU OF SHELL FISHERIES ESTABLISHED. POWERS. DUTIES.

Sec. 1. A State Bureau of Shell Fisheries is hereby established. The chief of said bureau shall be appointed by the Governor for the term of four years, and thereafter a successor shall be appointed for a like period of four years whenever said office shall become vacant by death, resignation or expiration of the current term; his salary shall be eighteen hundred dollars per annum, payable monthly by the Treasurer on the warrant of the Comptroller; the chief of such bureau may employ such clerical assistance as may be necessary from time to time; the several oyster commissions of the state shall file with such bureau a statement in detail, quarterly and oftener if required, of the receipts and disbursements of their several commissions, and such commissions shall further report annually to the said bureau on the first day of November a summary of the work of the said commissions for the preceding year; the director of the New Jersey College Experiment Station, at New Brunswick, shall annually file with said bureau a report of his experiments in the scientific investigation of oyster and clam propagation; all recommendations and reports of said commissions shall be made to the chief of said bureau; the said commissions shall forthwith on the granting of any lease or license transmit a memorandum or copy thereof to said bureau; a copy of all maps and surveys of any oyster lands heretofore or hereafter to be leased or surveyed by said commissions for any purpose and copy of all maps and surveys of any ground set apart for clamming grounds shall be filed forthwith with such bureau; the several oyster commissions, oyster superintendents shall also file with said bureau, when required by the chief thereof, or any record, papers, writings or data pertaining to their several offices; an office of said bureau shall permanently be

maintained at the State House and there shall be kept at all times on file therein all the reports, surveys, papers and records aforesaid; it shall be the duty of the chief of said bureau to procure and compile statistics and information relative to the progress and development of the oyster and clamming industry in this and in other states and countries, and to secure and keep on file the laws of other states regulating such industries; the chief of said bureau shall make a report to the Governor annually as of November first, each year, and not later than December first, annually, of the general condition of the oyster and clamming industry of the state and the transactions of the various commissioners aforesaid during the preceding year, and shall transmit therewith the reports and recommendations of the oyster commissioners and the report of the director of the experiment station, together with such recommendations as said bureau may deem advisable to make.

#### 34. OBSERVATION STATIONS.

Sec. 2. The state bureau of shell fisheries acting with the biologist of the state agricultural experiment station is hereby authorized and empowered to install and maintain at various points within the state, adjacent to or upon the oyster or clam producing waters, observation stations for the taking of temperatures, testing of waters and bottoms and gathering such other information as may be essential to the advancement and progress of the shell fish industry.

NOTE.—All the powers and duties of this Bureau were transferred to the Board of Shell Fisheries by Act of April 23, 1915, *P. L. p. 734*, Sections 1 to 15 *supra*.



### III. GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS.

#### AN ACT FOR THE PRESERVATION OF CLAMS AND OYSTERS.

Approved April 14, 1846, with its various amendments and supplements.

#### 35. CLOSED SEASON ON NATURAL OYSTER BEDS. (P. L. 1873, p. 399.)

Sec. 1. That from and after the first day of May until the first day of September, yearly and every year, no person, under pretense of taking clams or shell fish, or under any other pretense whatsoever, shall rake on any oyster bed in this state, or gather any oysters or shells on any banks or beds within the same; and in case any person shall so do, whether oysters be taken or not, he shall for every offense forfeit and pay (fifty) dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same in any court of record in this state having cognizance of that sum, one moiety thereof to the use of the prosecutor, and the other moiety to the county collector, for the use of the county in which the offense was committed; *provided*, that nothing in this section shall be so construed as to prohibit any person or persons from taking oysters from beds planted out by him or them pursuant to this law.

By supplement of March 18, 1852, *P. L. p. 232*, the period for raking or taking clams and oysters in the County of Hudson is extended from May 1 to July 1 in each and every year. By supplement of April 1, 1869, *P. L. p. 1193*, the time for gathering oysters in Cumberland County is extended to July 1. A penalty is also prescribed for taking oysters on Sunday, or at night between 8 P. M. and 4 A. M. By supplement of March 17, 1874, *P. L. p. 278*, the time for raking and taking oysters in Union County is extended from May 1 to July 1. See, also, *post*, Sections 19 and 24.

This act is constitutional. *State vs. Price*, 71 N. J., L. 249. Cited *State vs. Boller*, 47 Fed. Rep. 415.

See Sections 5 and 10 of Chapter 116, *P. L. 1917*, p. 250, Sections 20 and 25 *supra*; also *P. L. 1900*, p. 425, Sections 94 to 108 *post*, and *Bradford vs. De Luca*, 90 N. J. L. 434.

#### 36. PENALTY FOR USING DREDGES.

Sec. 2. That in case any person residing in or without this state, shall at any time hereafter rake for or gather oysters in any of the rivers, bays, or waters of this state, with a dredge, or instrument so called, or shall be on board

of any canoe, boat or vessel employed in raking with such implement, such person so offending shall forfeit and pay the sum of fifty dollars, to be recovered in the manner and for the use mentioned in the next preceding section; *provided*, that this and the sixth section shall not extend, so far as regards persons residing in this state, to the Delaware Bay.

### 37. JUSTICE OF PEACE TO ISSUE WARRANT.

Sec. 3. That it shall be the duty of every justice of the peace, upon his own view or the information of any person on oath or affirmation, to issue his warrant to one or more of the constables in his county, commanding him or them to require such and so many persons as he or they deem necessary to aid and assist him or them in apprehending every person offending against either of the preceding sections, in any of the bays, rivers, or waters of this state, and forthwith to bring such offender, when apprehended, before the said justice, or any other justice of the peace of said county, to be proceeded against in the manner hereinbefore directed.

NOTE.—See *P. L. 1900, p. 425*, Sections 94 to 108 *post*, and *Bradford vs. De Luca, 90 N. J. L. 434*.

### 38. PENALTY FOR OFFERING OYSTERS FOR SALE AT CERTAIN SEASONS.

Sec. 4. That if any person shall hereafter sell, or offer for sale, oysters, in any part of this state, between the first day of May and the first day of September, such person shall, for every such offense, forfeit and pay five dollars, to be recovered and applied in manner directed in and by the first section of this act.

### 39. GATHERING OYSTERS FOR LIME PROHIBITED.

Sec. 5. That if any person shall at any time hereafter rake or gather oysters in any of the rivers, bays or waters of this state, for the purpose of burning or converting them into lime, or for the purpose of conveying them to any of the landings to be used in the manufacture of iron in any of the furnaces of this state, or shall land them on any bank or

landing for either of the purposes aforesaid, every person so offending shall forfeit and pay fifty dollars for each and every offense, to be recovered and applied in manner directed by the first section of this act.

#### 40. VESSELS NOT TO CARRY DREDGE.

Sec. 6. That no canoe, scow, boat or vessel, employed in navigating any of the waters, bays or rivers of this state, shall have on board of the same any instrument called a dredge, for catching or raking oysters, or shell-fish; and the master or owner or owners of every such canoe, scow, boat or vessel, that shall have on board of the same any such instrument, shall forfeit the sum of fifty dollars, to be recovered in the manner and for the use mentioned in the first section of this act.

#### 41. UNLAWFUL FOR NON-RESIDENTS TO GATHER CLAMS, OYSTERS, ETC. (P. L. 1896, p. 336.)

##### Sec. 7. (Repealed March 14, 1917, *P. L. p. 53.*)

NOTE.—Prior to this repealer the Supreme Court held in *Bradford vs. De Luca*, 90 N. J. L. 434, that proceedings by a common informer for violation of this section could not be maintained under Section 9 (*post* Section 43) which had been superseded by act of March 23, 1900, *P. L. p. 425* (*post* Sections 94 to 108).

This section as originally enacted was Section 7 of the act of 1846. Rev. 1877, p. 136. It was amended March 29, 1892, *P. L. 361* by adding a proviso that the act should not apply between April 1 and June 15, and that the act should continue in force for the period of one year only. By act of March 7, 1893, *P. L. p. 92*, the one year limitation was repealed. By supplement of April 21, 1896, *P. L. p. 336*, Section 7 was reenacted, and the supplement of March 29, 1892, was repealed. This section makes no distinction between natural and planted oysters; it is not a regulation of commerce with foreign nations or among the states; it is for the protection of property and an internal police regulation; it does not violate Constitution of United States. *Haney vs. Compton*, 36 N. J. L. 507, E. & A. 1873.

See also, *Day vs. Compton*, 37 N. J. L. 514 E. & A. 1874; *Weller vs. Snover*, 42 N. J. L. 344; *State vs. Corson*, 67 N. J. L. 184.

#### 42. ACTIONS UNDER THIS ACT, HOW COMMENCED.

Sec. 8. That any action under the first, sixth or seventh sections of this act may be commenced by warrant in the court for trial of small causes and be proceeded in as in other cases when the same are commenced by warrant, any law, usage or custom to the contrary notwithstanding.



## 43. OFFENDERS, HOW PROCEEDED AGAINST.

Sec. 9. That it shall be the duty of all sheriffs and constables, and may be lawful for any other person or persons, to seize and secure any such canoe, flat, scow, boat or other vessel as aforesaid, and immediately thereupon give information thereof to two justices of the peace of the county where such seizure shall have been made, who are hereby empowered and required to meet at such time and place as they shall appoint for the trial thereof, and hear and determine the same; and in case the same shall be condemned, it shall be sold by the order and under the direction of the said justices, who, after deducting all legal costs and charges, shall pay one-half of the proceeds of said sale to the collector of the county in which such offense shall have been committed, and the other half to the person who shall have seized and prosecuted the same.

For cases in proceedings under this section, see *Haney vs. Compton*, 36 N. J. L. 507, E. & A. 1873, where it was held that "When the proceeding is *in rem* against property in a foreign jurisdiction, found in the possession of the owner or his agent, and in use for an unlawful purpose which carries a forfeiture of the same, the seizure thereof without judicial process first issued, preparatory to regular trial and condemnation, is not a deprivation of property without due process of law;" also, *Day vs. Compton*, 37 N. J. L. 514.

In *Bradford vs. De Luca and Kotok*, *Justices of the Peace*, 90 N. J. L. 434, it was held that the Court of Two Justices of the Peace, established by this act, had been abolished by the act of March 23, 1900, p. 425, Sections 94 to 108 *post*, entitled "An act to provide a uniform procedure for the enforcement of all laws relating to the taking of natural seed oysters and clams and the protection of the natural seed oyster grounds of this state and for the recovery of penalties for the violation thereof." A judgment rendered by the defendants, two justices of the peace, condemning and ordering sold a two-masted schooner alleged to have been used in the violation of the Seventh Section, was set aside with costs. On a subsequent rule to show cause, the Supreme Court, in an unreported opinion, held that as the two justices were without color of jurisdiction they were properly required to pay costs.

## 44. PENALTY FOR RESISTING OFFICERS.

Sec. 10. That if any person or persons, on board of any such canoe, flat, scow, boat or other vessel aforesaid, shall refuse and not suffer to enter the same, or resist before or after entering, any of the said officers or other person or persons seizing the same, or otherwise resist them, or any of them in the lawful seizing of the same, then every person so offending shall forfeit and pay the sum of thirty dollars, to be recov-

ered and applied in manner directed by the first section of this act.

#### 45. OWNERS OF MARSH MAY PLANT CLAMS, OYSTERS, ETC.

Sec. 11. That it shall be lawful for any person or persons owning marsh or meadow in this state, within the boundaries of which there shall be creeks, ditches or ponds wherein oysters do or will grow, and where such creeks or ditches do not lead to any public landing, to lay or plant clams or oysters therein, for the use and benefit of such owners, and for the preservation of which to erect a fence, hang or affix gates or locks across said creeks or ditches, to prevent any person or persons from entering the same.

#### 46. PENALTY FOR BREAKING DOWN FENCES.

Sec. 12. That if any person be found with any craft, boat or raft, above or within the aforesaid fences, gates or locks, without leave from the owner or occupant of any creek, ditch or pond, fenced, gated or locked as aforesaid, wherein clams or oysters may be laid or planted, or shall in any way break or destroy such fence, gate or lock, he, she or they so offending shall severally forfeit and pay, for each and every offense, the sum of fifty dollars, to be recovered by action of debt, with costs, in any court having cognizance thereof, by any person who shall prosecute for the same, one-half to the use of the owner or occupant of such creek, ditch or pond, and the other half to the person who shall sue for the same; *provided*, that nothing herein contained shall be so construed or understood as to obstruct or prevent the free navigation of any thoroughfare, creek or channel leading from or out of any of the bays or principal waters to any other bay or principal water, or to any accustomed landing place in this state, anything hereinbefore contained to the contrary notwithstanding.

#### 47. OYSTERS, HOW TAKEN IN NAVESINK RIVER.

Sec. 13. That it shall not be lawful for any person or persons to rake or take with tongs, or otherwise gather or carry away, any oysters, other than by wading in and picking

up by hand the same, within the following bounds in the river, commonly called or known by the name of the North or Navesink River, lying within the county of Monmouth, and dividing the township of Shrewsbury from the township of Middletown, above a direct line from the storehouse of Eseck White, on the Shrewsbury side of the river, to the dwelling house of Thomas Layton on the Middletown side of the river aforesaid; and in case any person or persons shall be found offending against this prohibition, he, she or they so offending shall forfeit and pay for every such offense the sum of ten dollars, to be recovered in an action of debt, with costs, before any justice of the peace in the county of Monmouth, by any person who shall sue for the same, the one-half to the use of the prosecutor, and the other half to be paid to the county collector, to and for the use of the county.

Supplement of March 16, 1870, *P. L. 591*, provides that it shall not be lawful for any person to erect stakes or any other artificial means for the purpose of using weirs or fike-nets for the taking of fish upon the bottom of North Shrewsbury River, where oysters are planted, without permission of the persons occupying the same.

#### 48. OWNERS OF FLATS BETWEEN GREAT AND LITTLE EGG HARBOR RIVERS MAY PLANT OYSTERS.

Sec. 14. That it shall and may be lawful for any person or persons owning flats or coves along the shores of the tide-waters in the county of Atlantic, between the Great Egg Harbor and Little Egg Harbor Rivers, inclusive of the shores of so much of the said rivers as lie within the said county of Atlantic, to mark out by fixing stakes across or around the same, at the distance of two rods from each other, and of such length as to be at least two feet above the ordinary high water, and plant or lay clams, oysters or other shell-fish within or above the same; *provided*, said stakes shall not include any natural oyster beds always covered with water beyond low-water mark; *and provided also*, it shall not be lawful to stake out beyond the ordinary low-water mark, nor injure any navigation publicly used.

This section does not authorize the owner of flats to stake off oyster beds beyond low water mark, *Townsend vs. Brown*, 24 N. J. L. 80. See *Infra* sec. 25.

Cited *McCarter vs. Oyster Company*, 78 N. J. L. 394.



## 49. PENALTY FOR TAKING OYSTERS WITHOUT PERMISSION.

Sec. 15. That if any person or persons shall gather or take away any oysters or clams, above or within the line of stakes aforesaid, without permission first had or obtained from the owner or owners, occupant or occupants, of the flats or coves so staked in, he, she or they so offending shall forfeit and pay for each offense the sum of twenty dollars, to be recovered and applied in manner directed by the twelfth section of this act, and shall moreover be liable to an action at the suit of the owner or owners, occupant or occupants, for his, her or their damages.

## 50. OWNERS OF MEADOW LANDS MAY PLANT OYSTERS. (P. L. 1890, p. 473.)

Sec. 16. That it shall and may be lawful for the owner or owners, or any person or persons having a license in writing from the owner or owners of meadow or other lands, which are opposite or contiguous to flats which are at any time bare, or coves, upon or within which flats or coves there have not been heretofore any natural oyster beds along the shores of the tide-waters of this state, to plant and lay clams, oysters or other shell-fish upon, within or above such flats and coves, and one chain beyond the same; *provided*, the clams and oysters thus planted shall be inclosed and designated by stakes placed beyond them within the prescribed limits, not less than six rods apart, and of such length as to be at least two feet above ordinary high water; *and provided also*, that this section shall not be so construed as to take away or in anywise impair the common right of citizens to any natural oyster beds which may be embraced by the boundary herein specified.

## 51. PENALTY FOR TAKING OYSTERS WITHIN CERTAIN LIMITS WITHOUT PERMISSION.

Sec. 17. That any person or persons who shall gather or take away any oysters or clams upon, above or within the limits aforesaid, without permission first had and obtained

from such owner or owners, person or persons occupying under such owner or owners as aforesaid, shall be liable to the same forfeitures and the like suits for damages, to be recovered and sued for in manner as is directed and provided in the fifteenth section of this act; *provided*, that nothing in this act shall prevent the legislature from the repeal or modification of this and the last foregoing section, at their pleasure.

52. SETTING UP STAKES MAY BE OMITTED IN CERTAIN CASES.

Sec. 18. That in coves and places where notorious and plain ranges or landmarks can be erected and established on contiguous shores, whereby the boundaries of planted beds of oysters may be clearly known and distinguished without danger of mistake, and where in such coves or places such notorious or plain ranges or marks on contiguous meadows or shores shall have been erected and established by stakes or other plain monuments, so that they may be plainly known and distinguished without danger of mistake, and due notice thereof being given, that then, and in such cases, the provisions of the two last-foregoing sections in regard to the planting and setting up of stakes may be dispensed with in respect to such places as above described.

53. TIME FOR TAKING OYSTERS IN CERTAIN COUNTIES.

Sec. 19. That the time within which the taking and vending of oysters is prohibited by the first and fourth sections of this act, is hereby extended to the first day of October, yearly and every year, in the counties of Burlington, Monmouth and Atlantic only, under the same penalties and regulations as are therein contained; *provided*, that planted oysters may be taken up at any time by the person owning the same.

By an act entitled "An act to authorize the planting of oysters on lands covered by water in Shark River, in the County of Monmouth, and for the protection of the same," approved March 14, 1861, *P. L. p. 436*, the Board of Chosen Freeholders are authorized to occupy a part of said river designated in the act, to appoint commissioners to stake off that part of the river in sub-divisions and lease the same for terms not less

than one nor more than five years. It further gives the lessees the sole right to plant and gather oysters within the aforesaid boundaries, and prescribes penalty for trespassing. By a supplement approved March 17, 1870, *P. L. p. 692*, the boundary lines of the part the Freeholders were authorized to occupy were enlarged, and the commissioners were authorized to extend the term of leases from five to ten years. By supplement of March 22, 1900, *P. L. p. 173*, the commissioners were authorized to further extend the terms of leases.

Act *P. L. 1861, p. 436*, and supplements thereto, are superseded by the act of March 7, 1905, *P. L. p. 27*, hereinafter set out.

See also, Sections 5 and 10 of Chapter 116, *P. L. 1917, p. 250*, Sections 20 and 25 *supra*.

#### 54. OLD SHELLS NOT TO BE REMOVED FROM NATURAL BEDS.

Sec. 20. That no person or persons, under any pretense of taking oysters, or under any other pretense whatever, shall take, remove or carry off from any natural oyster banks or beds, in this state, any old shells, other than such as cannot be removed or separated from the oysters without injuring the same; and all such shells shall be culled and separated from the oysters and thrown back again upon the said natural banks or beds; and in case any person or persons shall so take, remove or carry off from said natural banks or beds, whether oysters be taken or not, without first so separating the old shells from the oysters, he or they shall for every offense forfeit and pay ten dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same, in any court of record in this state having cognizance of that sum, one-half thereof to the use of the prosecutor and the other to the overseer of the poor for the use of the poor of the township in which the offense was committed, and the canoe, flat, scow, boat and other vessel, used and employed in the commission of the offense in this section mentioned, shall be liable to seizure, and be applied to the payment of such penalty; *provided, however*, that nothing in this act contained shall be so construed as to prohibit any person or persons from taking, removing or carrying any shells from beds planted out by him or them pursuant to law.

By supplement of February 27, 1877, *P. L. p. 29*, this section was repealed so far as it applies to the natural banks and beds in Delaware Bay and Maurice River Cove.

Cited, *McCarter vs. Oyster Company*, 78 N. J. L. 394.

See Section 12, *P. L. 1917, p. 250*, Section 27 *supra*; also *P. L. 1900, p. 425*, Sections 94 to 108 *post* and *Bradford vs. De Luca*, 90 N. J. L. 434.



## 55. PENALTY FOR SELLING CLAMS UNDER SIZE TAKEN IN ATLANTIC COUNTY.

Sec. 21. That it shall not be lawful for any person or persons to sell, or offer for sale, by the bushel or otherwise, any small clams which may have been taken in the waters of the county of Atlantic, unless the said clams shall be of such a size that a bushel will not contain more than four hundred; and if any person or persons shall so sell, or offer for sale, any such clams, four hundred of which will not make a bushel, such person or persons shall, for every such offense, forfeit and pay ten dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same, in any court of record in this state having cognizance of that sum, one-half to the overseer of the poor, for the use of the poor of the township in which the offense shall have been committed and the other half to the person who shall sue for the same.

By a supplement to the supplement of March 26, 1862, approved April 4, 1873, *P. L. p. 681*, the Board of Freeholders of Ocean County were authorized to appoint a commissioner to enforce the act in said County and regulate his compensation. The act to which this purports to be a supplement was repealed April 1, 1869, *P. L. p. 1100*.

## 56. NON-RESIDENTS NOT TO GATHER OYSTERS. (P. L. 1851, p. 439.)

Sec. 22. That it shall not be lawful for any person who is not at the time an inhabitant and resident of this state, and who shall not have been for six months next preceding an inhabitant and resident as aforesaid, to take, rake or gather oysters, clams, or shell-fish, in any of the rivers, bays or waters of this state; and every person offending herein shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court before which the conviction shall be had; *provided*, such imprisonment shall not exceed, in any case, the term of six months, nor the fine exceed the sum of one hundred and fifty dollars.

## 57. ADDITIONAL PENALTY FOR VIOLATING SECTION 12.

Sec. 23. That every person offending against the pro-

visions of the twelfth section of the act to which this is a supplement, shall, in addition to the penalty therein mentioned, be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court before which the conviction shall be had; *provided*, such imprisonment shall not exceed, in any case, the term of six months, nor the fine exceed the sum of one hundred dollars.

NOTE.—For Section above mentioned, see Section 46 *supra*.

**58. TIME FOR TAKING AND VENDING OYSTERS EXTENDED IN CAPE MAY COUNTY. (P. L. 1853, p. 139.)**

Sec. 24. That the time within which the taking and vending oysters is prohibited by the first and fourth sections of the act to which this is a supplement, is and that the same be extended to the first day of October, yearly and every year, in the county of Cape May, under the same penalties and regulations as are therein contained; *provided*, that nothing contained in this act shall prevent the owners of planted oysters from, at any time, taking up and vending the same.

Cited *State vs. Boller*, 47 Fed. Rep. 415.

**59. OWNERS OF MARSH AND MEADOW LANDS MAY LAY AND PLANT OYSTERS. (P. L. 1855, p. 216.)**

Sec. 25. That it shall be lawful for any person or persons owning marsh or meadow lands in this state, within the boundaries of which there shall be creeks, ditches or ponds wherein clams and oysters do or will grow, to lay or plant clams and oysters therein, for the use and benefit of such owners, and for the preservation of which he is to properly stake off such clam and oyster ground as not to interfere with the passing and repassing of vessels, but sufficient to designate where the same is planted.

Fishing for oysters in the navigable waters of the state is a right common to all its citizens, unless restrained by a positive law of the legislature. *Arnold vs. Mundy*, 6 N. J. L. 1; *Martin vs. Waddell*, 18 N. J. L. 496; *Gough vs. Bell*, 21 N. J. L. 156; *Id.* 22 N. J. L. 441; *Id.* 23 N. J. L. 624; *Wooley vs. Campbell*, 37 N. J. L. 163. See *Associates, etc., vs. Jersey City*, 8 N. J. E. 715; *Stevens vs. Railroad Co.*, 20 N. J. Eq. 135; *Shepard vs. Leverson*, 2 N. J. L. 369; *Yard vs. Carman*, 3 N. J. L. 943. The right of navigation is superior to that of fishing, *Post vs. Munn*, 4 N. J. L. 61. The Legislature may grant the right to plant oysters in the bed of navigable streams to one citizen to the exclusion

of others. *Paul vs. Hazleton*, 37 N. J. L. 106; *Wooley vs. Campbell*, 37 N. J. L. 163; *Canal Co. vs. Railroad Co.*, 16 N. J. E. 366; *Bennett vs. Boggs*, *Baldw.* 60, *Fed. Cas. No. 1319*. See *Howell vs. Robb*, 7 N. J. E. 17; *Stevens vs. Paterson Railroad Co.*, 34 N. J. L. 532. Several lessees may use jointly lands which have been granted to them severally, and may join in an action for taking their oysters therefrom. *Wooley vs. Campbell*, 37 N. J. L. 163. A meadow owner cannot acquire the exclusive right to the possession of the bed of creek or water course running through his lands, unless he plants, or intends forthwith to plant oysters or clams therein; his merely staking off such place will confer no right. *Birdsall vs. Rose*, 46 N. J. L. 361. The owner has the same absolute property in oysters that he has in inanimate things or domestic animals, and the rule that applies to animals *ferae naturae* does not apply to them. *State vs. Taylor*, 27 N. J. L. 117 (1858). An indictment will lie for stealing oysters planted in the public or navigable waters of this state, if they are planted in a place where oysters do not grow naturally, and the spot is so designated by stakes or otherwise, that the oysters can be readily distinguished from others in the same waters. *Id.* Oysters planted in public waters will not be considered as abandoned to the public, unless planted in a place where oysters grow naturally. *Id.* Planting oysters in public waters is not such a special appropriation of those waters as justifies the removal of the oysters as a nuisance, unless they interfere with the rights of the public, such as the rights of navigation and fishing; and even if they do so interfere with public rights, a private person has no right to take them away, and convert them to his own use. *Id.*

See, also, *Metzger vs. Post*, 44 N. J. L. 74 and *Grace vs. Willetts*, 50 N. J. L. 414, *E. & A.* 1888. In this case plaintiffs deposited in Maurice River Cove, in 1884, a boat load of oyster shells. To these the germs of oysters floating in these waters attached themselves, and in about two years developed into marketable oysters. *Held*, that these oysters belonged to the plaintiffs and that they could maintain an action against the defendants for the removal and conversion of them.

The state may grant the exclusive use of its land under water, but until such grant is made, the right to enter and fish upon it may be exercised by all the citizens of the State. *Polhamus vs. Bateman*, 60 N. J. L. 163.

## 60. PENALTY FOR VIOLATION OF PROVISIONS OF ACT.

Sec. 26. That any person or persons violating the provisions of this act shall be subject to all the fines and penalties contained in the act to which this is a further supplement.

A further supplement to this act, *P. L.* 1866, *p.* 484, authorizes persons owning marsh or meadow lands bounding on Cedar Creek, Fairfield Township, Cumberland County, to lay or plant oysters, also, to stake off such clam or oyster grounds.

## 61. OYSTERS NOT TO BE TAKEN FROM NATURAL BEDS IN CERTAIN COUNTIES EXCEPT BY DAYLIGHT. (*P. L.* 1864, *p.* 631.)

Sec. 27. That it shall not be lawful for any person or persons to take any oysters out of the natural beds of the counties of Burlington, Atlantic and Ocean, between the first day of May and sunrise of the first day of October yearly, only by daylight, under the penalty of twenty-five dollars for each and every offense.

NOTE.—See Section 29 *supra*.



62. OWNERS OF FLATS AND COVES ALONG TIDE-WATERS IN BURLINGTON COUNTY MAY PLANT OYSTERS. (P. L. 1871, p. 493.)

Sec. 28. That it shall and may be lawful for any person or persons owning flats or coves along the shores of the tide-waters in the county of Burlington, between the lines separating Burlington from Ocean and Atlantic counties, to mark out, by fixing stakes across or around the same, at the distance of two rods from each other, and of such length as to be at least two feet above the ordinary highwater, and plant or lay oysters or other shell-fish within or above the same; *provided*, said stakes shall not include any natural oyster beds always covered with water beyond low-water mark; *and provided also*, it shall not be lawful to stake out beyond the ordinary low-water mark nor injure any navigation publicly used.

63. PENALTY FOR TAKING OYSTERS OR CLAMS SO PLANTED WITHOUT PERMISSION.

Sec. 29. That if any person or person shall gather or take away any oysters or clams, above or within the line of stakes aforesaid, without permission first had or obtained from the owner or owners, occupant or occupants of the flats or coves so staked in, he, she or they so offending shall forfeit and pay for each offense the sum of twenty dollars, to be recovered and applied in manner directed by the twelfth section of the act to which this act is a further supplement, and shall moreover be liable to an action at the suit of the owner or owners, occupant or occupants, for his, her or their damages.

64. CONSTRUCTION OF THE WORDS "DREDGE OR INSTRUMENT SO CALLED." (P. L. 1873, p. 44.)

Sec. 30. That the words "dredge or instrument so called," in sections two and six of the act to which this act is a further supplement, shall be and is hereby taken, deemed and intended to mean and apply to any rake or other instrument designed and intended to be used or which shall be used and dragged by any canoe, boat or vessel in any of the rivers, bays or waters of Burlington county, in this state, as a dredge, and

for the uses and purposes of a dredge, whether called by that name or otherwise.

**65. PENALTY FOR USING RAKE OR OTHER INSTRUMENTS IN WATERS OF BURLINGTON COUNTY.**

Sec. 31. That all the penalties in sections two and six of the act to which this act is a further supplement shall and hereby do apply to all such person or persons using such rake or rakes, or other instruments, or canoe, boat or vessel having on board such rake or other instrument to be employed and used in raking and dredging or which shall be found employed and using such rake or other instrument in like manner as dredges are used, and for the same purposes for which dredges are used, in any of the rivers, bays or waters of the county of Burlington, in this state, whether such rake or other instrument be called by the name of dredge or otherwise.

**66. NO BOAT TO BE USED FOR GATHERING CLAMS, ETC., UNLESS OWNER RESIDENT OF STATE. MORTGAGE TO NON-RESIDENT UNLAWFUL. (P. L. 1892, p. 360.)**

Sec. 32. That it shall not be lawful for any canoe, flat, scow, boat or other vessel to be used or employed in any of the rivers, bays or waters of this state to rake or gather clams, oysters or shell-fish, unless the same shall be owned by citizens and actual residents of this state, and who have been for twelve months next preceding actual citizens and residents as aforesaid; and it shall not be lawful for any non-resident to hold a lien or mortgage on any canoe, flat, scow, boat or any other vessel engaged in the oyster business of this state as aforesaid; nor shall any such canoe, flat, scow, boat or any other vessel be commanded by any person who is not a citizen and actual resident of this state for twelve months next preceding; and any canoe, flat, scow, boat or other vessel not so owned and commanded, used and employed as aforesaid, with all the clams, oysters, clam-rakes, tongs, tackle, furniture and apparel shall be forfeited, and the same seized, secured and disposed of in the manner prescribed in the ninth and tenth sections of the act to which this is a supplement;

*provided*, that this act shall not apply to or effect vessels or boats already having license in this state under existing laws.

NOTE.—This section was embodied in an act entitled “A supplement to an act entitled ‘An act for the preservation of clams and oysters’ (Rev.), approved April 14, 1846,” which supplement was approved March 29, 1892, and appears in *P. L. 1892, p. 360*. On p. 361 there is another act of the same title and approved on the same day, which amends the seventh section, and provides that such amendment shall continue in force for the period of one year from the date of the approval of said act.

Chapter 196 of the laws of 1896, *P. L. p. 336*, is entitled “A supplement to an act entitled ‘An act for the preservation of clams and oysters’ (Rev.), approved April 14, 1846.” This supplement was approved April 21, 1896. The first section of this supplement re-enacts the seventh section as it appears in the revision of 1877. The second section of this supplement reads as follows:

“2. The supplement approved March 29, 1892, being the supplement to the ‘act for the preservation of clams and oysters’ approved April 14, 1846, shall be and the same is hereby repealed, and all other acts and parts of acts inconsistent herewith be and the same are hereby repealed.” The language above quoted from Sec. 2 is descriptive of the act, *P. L. 1892, p. 360* and *P. L. 1892, p. 361*.

In view of the uncertainty, Section 32, being the act on p. 360, is included herein.

As to procedure, see *P. L. 1900, p. 425*, Sections 94 to 108 *post*, and *Bradford vs. De Luca*, 90 N. J. L. 434.

## 67. SPECIAL OFFICERS, HOW APPOINTED. EMPOWERED TO ARREST VIOLATORS OF ACT. (*P. L. 1893, p. 111.*)

Sec. 33. That in order to better carry out and enforce the provisions of the act to which this act is a supplement, and the acts supplementary thereto, it shall be lawful for the directors of any association of oystermen duly incorporated under the laws of this state to appoint special officers, not exceeding three in number, who shall be citizens of this state, and who shall be and hereby are empowered at all times while holding the office or position of such special officer, upon their own view, to arrest any person or persons who may be found violating or infringing any of the provisions of the act to which this act is a supplement or of any of the acts supplementary thereto, and to bring him or them before a magistrate for examination.

## 68. HOW SPECIAL OFFICERS ARE PAID.

Sec. 34. That such special officers shall be paid for their services under this act by the association appointing them and not otherwise.



**69. WHEN AND WHERE UNLAWFUL TO DREDGE. OFFENDERS GUILTY OF MISDEMEANOR. PENALTY. (P. L. 1893, p. 340.)**

Sec. 35. That from and after the passage of this act it shall be unlawful to dredge for oysters in any of the creeks on the east side of Delaware river, of Delaware bay and Maurice River Cove south of Cohansey Creek at any time, and in Cohansey Creek and in all creeks north of said Cohansey Creek, in Delaware river and Delaware bay it shall be unlawful to dredge for oysters except during the time from the first day of April to the fifteenth day of June, both days inclusive, and any person offending against the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment at hard labor for a period not exceeding one year, or both, at the discretion of the court, and any boat or vessel employed in the commission of any offense against the provisions of this act, with all her tackle, apparel and furniture shall be forfeited and the same seized, secured and disposed of in the manner prescribed in the eighth, ninth and tenth sections of the act entitled "An act for the preservation of clams and oysters," approved April fourteenth, one thousand eight hundred and forty-six.

Inconsistent acts repealed.

See Sections 5 and 10, Chapter 116, *P. L. 1917 p. 250*, Sections 20 and 25 *supra*.

**70. MISDEMEANOR TO TAKE OYSTERS FROM STAKED-UP BED WITHOUT PERMISSION. PENALTY. (P. L. 1895, p. 319.)**

Sec. 36. That any person who shall hereafter dredge upon, or shall throw or cast his oyster dredge or any other instrument used for the purpose of catching oysters upon any oyster bed duly staked up within or under any of the waters of this State, belonging to or in the possession of any other person or persons, without the permission of the owner or holder of such oyster bed, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for any term not exceeding two years, or both; and any boat or vessel

used or employed in the commission of such offense, with all her furniture, tackle and apparel, and all oysters on board thereof, shall be forfeited, and the same seized, secured and sold in the manner prescribed in the act entitled "An act for the preservation of clams and oysters," approved April fourteenth, one thousand eight hundred and forty-six, and the supplements thereto, and the proceeds of such sale, after deducting all expenses, shall be paid to the collector of the oyster fund of the Maurice River Cove and Delaware Bay Oyster Association.

**71. MISDEMEANOR TO TAKE PLANTED OYSTERS WITHOUT PERMISSION. PENALTY. (P. L. 1895, p. 319.)**

Sec. 37. That any person who shall hereafter dredge for, or shall catch or take, or attempt to catch or take, any oysters planted in or under any of the waters of this state, the location of which planted oysters is indicated by stakes or buoys, without the permission of the owner of such planted oysters, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for any term not exceeding two years, or both; and any boat or vessel used or employed in the commission of such offense, with all her furniture, tackle and apparel, and all oysters on board thereof, shall be forfeited, and the same seized, secured and sold in the manner prescribed in the act entitled "An act for the preservation of clams and oysters," approved April fourteenth, one thousand eight hundred and forty-six, and the supplements thereto, and the proceeds of such sale, after deducting all expenses, shall be paid to the collector of the oyster fund of the Maurice River Cove and the Delaware Bay Oyster Association.

**72. NO EXCLUSIVE RIGHT TO NATURAL OYSTER BEDS, GRANTED. (P. L. 1895, p. 320.)**

Sec. 38. That nothing in this act contained shall give to any person or persons the right or privilege, nor shall it confirm any supposed right or privilege, to stake up, take, have, hold, use, occupy, possess or enjoy any exclusive right in or to any natural oyster-bed or ground.

*Inconsistent acts repealed.*

73. TAKING OF HARD MUD CLAMS REGULATED. SOFT SHELL CLAMS. PENALTY. (P. L. 1899, p. 322, as amended by P. L. 1900, p. 422.)

Sec. 39. From and after the passage of this act it shall be unlawful for any person or persons to take from the natural beds beneath the waters of this state, by means of boats, tongs, dredges, rakes or otherwise, or to have in their possession, or to buy or sell, or to offer to buy or sell, any clams commonly called hard mud clams, the shells of which will measure less than one inch in width or thickness across the back or hinge; except said clams be taken beneath the waters of Atlantic county, in which case they shall not measure less than one and one-quarter inches in length; or to buy or sell, or to offer to buy or sell, any clams commonly called hard sand clams, the shells of which will measure less than one inch in width or thickness across the back or hinge, except said clams be taken beneath the waters of Atlantic county, in which case they shall not measure less than one and one-quarter inches in length; or to buy or sell, or offer to buy or sell, any clams commonly called soft-shell clams, the shells of which will measure less than two inches in length; and every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, at the discretion of the justice of the peace before whom the case is brought, and in default of payment of the fine, the justice shall commit him to the county jail for a period of not less than ten days nor more than thirty days; one-moiety of said fine (after deducting therefrom the fees of the justice and of the officer making the arrest, which fees shall be the same as are allowed for issuing and serving warrants and holding examination or hearing in other causes), to be paid by said justice imposing and collecting the fine to the overseer of the poor, for the use of the poor of the township in which the offense shall have been committed, and the other half or moiety to be paid to the warden, constable or person who made the complaint.



## 74. WARRANT FOR APPREHENSION OF VIOLATORS. (P. L.

1899, p. 323, as amended by P. L. 1903, p. 236.)

Sec. 40. Upon complaint under oath, made to him, any justice of the peace of the county wherein the offense was committed may and shall issue his warrant for the arrest and apprehension of any person violating the provisions of the first section of this act; and it shall be the duty of the several oyster commissioners or any constable to, and any other person may, make complaint and bring action before any justice of the peace of the county against any person or persons so violating the provisions of this act; which warrants shall be served by either such oyster commissioner or constable.

## 75. VESSELS MECHANICALLY PROPELLED PROHIBITED FROM TAKING OYSTERS. (P. L. 1904, p. 333.)

Sec. 41. It shall be unlawful for any boat or other vessel propelled wholly or in part by steam, naphtha, electricity, or any other mechanical motive power, to engage in the catching or taking of oysters from any of the natural beds, under the tidal waters of this state, and no license shall be issued by any oyster commission, shell commission, or other authority, to any boat or vessel so propelled, authorizing such boat or vessel to engage in the catching or taking of oysters from any of said natural beds; any person using a boat so propelled in such business, shall be guilty of a misdemeanor, and any boat or other vessel propelled wholly or in part by any such mechanical motive power, and so engaged, shall be forfeited together with all the tongs, dredges, tackle, furniture and appurtenances thereto belonging, and shall be seized, secured and disposed of in the manner prescribed in the act to which this is a supplement.

## 76. CAPE MAY COUNTY CLAM LINE ESTABLISHED. (P. L. 1905, p. 459.)

Sec. 42. From and after the passage of this act it shall be unlawful for any person or persons, company or corporation, at any time whatsoever, to use, cast, drag or haul any

dredge, patent rake or other similar device, which shall be towed, dragged or hauled by or behind any boat, vessel or craft propelled by sail, steam or other power, or to catch therewith any clams, oysters or shells in the waters of the Delaware Bay, southwesterly of a line running northwest from the mouth of Green Creek, Cape May county, to the intersection of such line with a line direct from the mouth of Dennis Creek to Brandywine lighthouse; *provided, however*, that this prohibition shall not apply to any territory which was under lease from the state oyster commission of the state of New Jersey on the first day of February, one thousand nine hundred and five; and any person offending against the provisions of this act shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment at hard labor for any term not exceeding six months, or both, at the discretion of the court; and any boat or vessel employed in the commission of any offense against the provisions of this act shall, with all her tackle, apparel and furniture, be forfeited; and the same may be seized, secured, condemned and disposed of in the manner prescribed in the ninth and tenth sections of the act to which this is a supplement.

Inconsistent acts repealed.

NOTE.—The title of this act of May 11, 1905, *P. L. 459*, is as follows: "A supplement to an act entitled 'An act for the preservation of clams and oysters,' approved April fourteenth, one thousand eight hundred and forty-one."

The act mentioned in the title was approved April 14, 1846, not April 14, 1841.

As to penalty, see *P. L. 1900 p. 425*, Sections 94 to 108 *post*, and *Bradford vs. De Luca*, 90 *N. J. L.* 434.

## 77. INSPECTION OF CLAM AND OYSTER BEDS. RECORD OF INSPECTION. (*P. L. 1910, p. 147.*)

Sec. 43. It shall be the duty of the Board of Health of the State of New Jersey annually, or oftener if said board shall deem it necessary, to inspect, or cause to be inspected, the various oyster and clam beds and other places within the State of New Jersey from which oysters or clams are taken to be marketed and sold for consumption as food, for the purpose of ascertaining the sanitary conditions of such oyster

and clam beds and other places, and the fitness of the oysters and clams in such places, or which are taken therefrom, for use as articles of food. The said Board of Health of the State of New Jersey shall keep, or cause to be kept, an official record of each inspection so made, and shall, as soon as possible thereafter, issue certificates, setting forth the result of such inspection, to the owners, lessees or proprietors of such oyster or clam beds, or other places.

**78. PENALTY FOR TAKING SHELL-FISH FROM BED CON-  
DEMNED BY BOARD OF HEALTH.**

Sec. 44. Any person who shall gather with intent to sell for food any oysters or clams from oyster beds or clam beds or any other place within the jurisdiction or forming a part of the State of New Jersey, which have been condemned by said board, in accordance with section one of this act, shall be liable to a penalty of one hundred dollars, to be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey.

NOTE.—See Chapter 24, *P. L. 1912*, p. 44, Sections 118 to 129 *post*, and Chapter 263, *P. L. 1918* p. 995, Sections 31 and 32 *supra*.

**79. USE OF POWER BOAT IN TAKING CLAMS PROHIBITED. (P.  
L. 1912, p. 42.)**

Sec. 45. It shall be unlawful to use or employ any boat or other vessel propelled wholly or in part by steam, gasoline, electricity or any other mechanical motive power, or any motor driven apparatus, for the purpose of catching or taking of clams from any of the waters of this state, whereby the soil or bottom of which the said clams are found is agitated or disturbed by the propeller wheel or wheels of said boats or other motor driven apparatus for the purpose of catching or taking of clams as aforesaid.

**80. PENALTY. CONFISCATION OF BOAT, ETC. (P. L. 1912, p. 42.)**

Sec. 46. Any person being in charge of such boat or apparatus so propelled and used, or so propelled or so used for such purpose, shall be guilty of a misdemeanor, and any boat or other vessel propelled wholly or in part by

such mechanical motive power or such other motor driven apparatus so engaged or used, shall be forfeited together with all tongs, dredges, tackle, furniture and appurtenances thereunto belonging, and shall be seized, secured and disposed of in the manner prescribed in the act, to which this is a supplement.

NOTE.—As to procedure, see Act of March 23, 1900, *P. L. p. 425*, Sections 94 to 108 *post*, and *Bradford vs. De Luca*, 90 *N. J. L. 434*.

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#### IV. MISCELLANEOUS GENERAL ACTS.

AN ACT FOR THE BETTER ENFORCEMENT IN ANY RIVER OR BAY OF AN ACT ENTITLED "AN ACT FOR THE PRESERVATION OF CLAMS AND OYSTERS," APPROVED APRIL FOURTEENTH, ONE THOUSAND EIGHT HUNDRED AND FORTY-SIX, AND SUPPLEMENTS THERETO.

Approved April 27, 1886.

##### 81. UNLAWFUL FOR NON-RESIDENTS TO PLANT SEED OR GROW OYSTERS. (*P. L. 1886, p. 300.*)

Sec. 1. That it shall be unlawful for any person or persons not residents of this state, and who shall not have been residents for six months next preceding, to plant seed or grow oysters in the waters of any river or bay; and any oysters, oyster shells, or other materials for seeding or growing oysters so planted shall become public property, or may be caught or taken up by any citizen of this state; and any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or fine and imprisonment, at the discretion of the court.

NOTE.—Superseded by Section 1 of Chapter 116, *P. L. 1917, p. 250*, as amended by Chapter 217, *P. L. 1918 p. 781*, Section 16, *supra*.



AN ACT TO PROTECT THE PLANTING AND CULTIVATING OF OYSTERS IN THE TIDE-WATERS OF THIS STATE.

Approved May 17, 1894.

82. PERSONS OCCUPYING CERTAIN GROUNDS SHALL BE CONFIRMED IN THEIR HOLDING. (P. L. 1894, p. 429.)

Sec. 1. That any person or persons, citizens of this state, now or hereafter holding, using or occupying any grounds lying under the tide-waters of this state for the planting or cultivating of oysters thereon, said grounds not now known and recognized as natural oyster seed beds, from which there is now gathered seed or young oysters for planting purposes, shall be and hereby are confirmed in their holding or right to use such grounds for the purpose of planting and cultivating of oysters, and the oysters planted and growing thereon shall be the personal property of the person or persons holding, using or occupying the grounds as aforesaid; *provided*, the said grounds shall have been marked by proper stakes, buoys or suitable monuments, and oysters shall have been actually planted upon the grounds so marked off.

83. OYSTERS ON PRIVATE GROUNDS DEEMED PERSONAL PROPERTY. TRESPASSING A MISDEMEANOR. (P. L. 1895, p. 560.)

Sec. 2. That upon the grounds now or hereafter held, used or occupied as aforesaid the person or persons holding, using or occupying the same may plant, cultivate and gather oysters; they may shell said grounds and gather the oysters that may grow thereon, and all oysters on said grounds shall be deemed and taken to be their personal property; and every person or persons who shall gather, catch or take oysters, clams or shells from any lot of ground properly planted with oysters held, used or occupied as aforesaid, or use thereon any tongs, rake or dredge without the permission of the person or persons holding, using or occupying the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not greater than one hundred dollars or be confined in the county jail for a period not exceeding six months, or both, at the discretion of the court.

**84. UNLAWFUL TO TAKE OYSTERS FROM PRIVATE GROUNDS.  
CONSTABLE MAY SEIZE BOATS. JURISDICTION OF  
OFFENSE. BOAT MAY BE SOLD. (P. L. 1894, p. 429.)**

Sec. 3. That it shall be unlawful for any person, without the permission of the person or persons holding, using or occupying the grounds now or hereafter held, used or occupied as aforesaid to work from boats or otherwise with rakes, dredges or other appliances upon any of said grounds, and thereby to injure, disturb or remove the oysters planted and growing thereon; and it shall be the duty of any constable or duly-authorized special officer, and lawful for any other person, to seize and secure any boat, rake, dredge or other appliance used in violation of this law and immediately give information thereof to any justice of the peace of the county wherein such seizure is made, who is hereby empowered and required to hear, try and determine whether such boat, rake, dredge or other appliance so seized was used in violation of this law; the said justice shall appoint a time and place of trial and cause reasonable notice thereof to be given to the person who was in possession of the property seized and the owner thereof, if they can be found; and shall, at the time and place appointed, determine whether the boat, rake, dredge or other appliance seized was used in violation of this law, and if found to have been so used shall order the same to be sold in such manner as the said justice shall direct; and the avails thereof, after deducting all proper and reasonable costs and charges which said justice may tax and allow, shall be paid one-half to the person or persons making the seizure and one-half to the treasurer of the state for the use of the state.

**85. CLAM GROUNDS NOT TO BE USED FOR OYSTER CULTURE.**

Sec. 4. That no grounds now used and set apart for clamming purposes in said state shall be occupied and used for the purpose of planting or cultivating oysters.

**86. STAKES SHALL BE YIELDING.**

Sec. 5. That all stakes used for the purpose aforesaid

shall be elastic and yielding, and shall not impede navigation nor interfere with the drawing of seines in any place now established and customarily used for seine fishing.

**87. FORFEITURE OF OYSTERS PLANTED ON NATURAL BEDS.**

Sec. 6. That any person or persons who shall plant oysters upon any of the natural oyster beds lying under the waters aforesaid, now known and recognized as natural oyster beds, and from which there is now gathered seed or young oysters for planting purposes, shall be deemed trespassers, and such planted oysters shall be forfeited to the public, who shall have the right and privilege of going upon said beds and taking said planted oysters and converting the same to their own use at any time when it is now lawful to take oysters from said natural beds.

**88. TITLE SHALL NOT RUN AGAINST STATE.**

Sec. 7. That nothing in this act contained shall give any person or persons the right or title to any of said lands as against the state, and the state may at any time alter or repeal this law, or the riparian commissioners may make grants, the same as if this act had not been passed.

**89. ACT NOT APPLICABLE TO DELAWARE BAY.**

Sec. 8. That none of the provisions of this act shall apply to the waters or bottoms of Delaware Bay and Maurice River Cove.

**90. REPEALER.**

Sec. 9. That this act shall and is hereby declared to be a public act and shall take effect immediately, and all acts and parts of acts inconsistent herewith shall be and hereby are repealed.

**91. PENALTY. (P. L. 1895, p. 502.)**

Sec. 10. That any person or persons removing any stakes, buoys or monuments placed or erected for the purposes as set forth in the first section of the act to which this is a supple-

ment, shall, upon conviction thereof before any court of competent jurisdiction, pay a fine of twenty dollars or be imprisoned in the county jail for a period not exceeding ninety days, either or both, at the discretion of the court.

## 92. REPEALER.

Sec. 11. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

NOTE.—As originally passed April 28, 1890, *P. L. 280*, this act was a supplement to the act entitled "An act for the preservation of clams and oysters," approved April 14, 1846. It was amended April 16, 1891, *P. L. p. 467*. In October, 1891, Abraham Post was indicted by the grand jury of Monmouth County for an alleged violation of the act. On motion to quash, the Supreme Court in the case of *State vs. Post*, 55 *N. J. L. 264*, held the act to be unconstitutional because it was expressly restricted in its operation to those persons who had used and occupied oyster grounds from January 1, 1880, and who were in occupancy at the passage of the act in 1890. Justice Van Sycle said "The right to plant oysters on the lands of the state for the sole use of the occupant, is a privilege, and, inasmuch as it excludes all others from taking them, it is an exclusive privilege which cannot be granted by special, local or private laws.

"Prior to the adoption of the amendments to the constitution, there had been conspicuous instances in which the legislature had made valuable grants to individuals and corporations by special laws.

"The purpose of the constitutional clause under consideration (par. 11, sec. 7) was to interdict all legislation of that character, if, therefore, the act of 1890 is private, local or special, it is in conflict with the fundamental law.

"The expressed purpose of the act is to encourage and protect the planting and cultivation of oysters. If the legislature conceives that public policy requires the appropriation of the state's lands under water, or any part of them, to this object, it may enact such laws as will effectuate it, provided it can be accomplished by general laws.

"The state may grant rights in some of its lands without disposing of all its possessions, but it cannot select individuals or corporations as the objects of its bounty, to the exclusion of other citizens of the state."

This decision was rendered at the February Term, 1893, and the act last above set out was passed at the next session of the legislature.

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## AN ACT TO PROTECT THE NATURAL OYSTER-SEED GROUNDS OF THIS STATE.

Approved March 17, 1899.

## 93. ROUGH CULL LAW. NOT APPLICABLE TO DELAWARE BAY. (*P. L. 1899, p. 85.*)

Sec. 1. It shall not be lawful for any person or persons,



under pretense of taking oysters, or under any other pretense whatever, to remove or carry off from any natural oyster-seed grounds in this state any shells other than such as cannot be removed or separated from the oysters without injuring the same; and all such shells shall be culled and separated from the oysters and thrown back again upon the said natural oyster-seed grounds; and any person or persons offending against the provision of this act shall be deemed guilty of a misdemeanor and punishable, after conviction, by a fine of fifty dollars for each and every offense, or imprisonment in any county jail for a period of three months, or both, at the discretion of the court; and the fine, when so recovered, one-half to go to the complainant and one-half to the treasurer of the state for the use of the state; *provided*, that the provision of this section shall not apply to Delaware Bay and Maurice Cove and the tributaries thereto.

NOTE.—This act has been superseded by Section 12 of Chapter 116, P. L. 1917, p. 250, which applies to the entire state. See Section 27 *supra*.

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AN ACT TO PROVIDE A UNIFORM PROCEDURE FOR THE ENFORCEMENT OF ALL LAWS RELATING TO THE TAKING OF NATURAL SEED OYSTERS AND CLAMS AND THE PROTECTION OF THE NATURAL SEED OYSTER GROUNDS OF THIS STATE AND FOR THE RECOVERY OF PENALTIES FOR THE VIOLATION THEREOF.

Approved March 23, 1900.

94. LAWS FOR PROTECTION OF SEED OYSTERS AND GROUNDS,  
HOW ENFORCED. (P. L. 1900, p. 425.)

Sec. 1. All laws, general and special, for the protection of natural seed oyster grounds, or in any manner prohibiting or regulating the taking or possession of natural seed oysters and clams, shall hereafter be enforced, and all penalties for violations thereof shall hereafter be recovered in accordance with the provisions of this act.

**95. JURISDICTION.**

Sec. 2. Justices of the peace, district courts and police magistrates shall have jurisdiction to try and punish any person or persons, corporation or corporations, accused of violating any of the laws specified in the first section of this act, or any of the provisions thereof, and every penalty prescribed for such violation may be enforced and recovered before any justice of the peace, district court or police magistrate, either in the county where the offense is committed or where the offender is first apprehended or where he may reside.

**96. PROCEDURE.**

Sec. 3. Such justice of the peace, district court or police magistrate, upon receiving complaint in writing, duly verified, of the violation of any law specified in the first section of this act, or of any of the provisions thereof, is hereby authorized and required to issue a warrant, directed to any constable, police officer, oyster commissioner or their assistants, commanding him to cause the person or persons so complained of to be arrested and brought before such justice, district court or police magistrate, and shall thereupon, in a summary way, hear and determine the guilt or innocence of such person or persons, and, upon conviction, shall impose upon the person or persons so convicted the penalty or penalties prescribed, together with the costs of prosecution for such offense; and if any person or persons shall fail to pay the penalty or penalties so imposed, together with the costs of prosecution, the said justice, district court or police magistrate shall commit him or them to the common jail of the county where such conviction is had, for a period not exceeding ninety days, or until said penalty and costs are paid.

**97. ARREST WITHOUT WARRANT.**

Sec. 4. For the violation of any laws specified in the first section of this act, or of any of the provisions thereof, done

within the view of any constable, police officer, oyster commissioners or their assistants, such officer is hereby authorized, without warrant, to arrest the offender or offenders and to carry him or them before a justice of the peace, district court or police magistrate of the county wherein such arrest is made, and the justice, district court or police magistrate before whom such offender or offenders shall be taken is hereby authorized and required to hear and determine in a summary way the guilt or innocence of such person or persons, after receiving from the said officer a complaint in writing, duly verified, setting forth the nature of the offense for which the said person or persons was or were arrested.

#### 98. COSTS AND FEES.

Sec. 5. In any action commenced under the provisions of this act the prevailing party shall recover costs against the other, and the same fees and costs shall be allowed therein as in trials before justices of the peace holding court for the trial of small causes.

#### 99. ADJOURNMENT OF HEARING.

Sec. 6. Any hearing to be held pursuant to this act may, for good cause shown, be adjourned for a period not exceeding thirty days from the return of any warrant of the time of appearance mentioned in any summons, or from the date of any arrest without warrant, as the case may be, but in case it shall be the duty of the justice, district court or police magistrate to detain the defendant or defendants in safe custody unless he or they shall enter into bond to the person making the complaint, with at least one surety, in double the amount of the penalty to be recovered, conditioned for his or their appearance on the day to which the hearing shall be adjourned, and thence from day to day until the case is disposed of, and then to abide by the judgment of the justice, district court or police magistrate, *provided* no appeal therefrom be taken, and such bond, if forfeited, may be prosecuted by the person to whom it is given in any court of competent jurisdiction.

**100. DISPOSITION OF MONEYS RECOVERED.**

Sec. 7. All moneys recovered pursuant to the provisions of this act shall be paid in each case to the person making the complaint, who shall pay one-third thereof to the treasurer of the state for the use of the state, and one-third thereof in equal proportions to the persons furnishing the evidence necessary to secure a conviction.

**101. APPEAL MAY BE TAKEN. PROVISIO.**

Sec. 8. Any party to any proceeding instituted under this act may appeal from the judgment or sentence of the justice, district court or police magistrate, to the court of common pleas of the county in which the said proceedings shall take place; *provided*, that the party appealing shall within ten days after the date of the said judgment serve a written notice of appeal upon the opposite party, pay the costs of such proceedings and deliver to the justice, district court or police magistrate a bond to the opposite party in double the amount of the judgment appealed from, with at least one sufficient surety, conditioned to prosecute the said appeal and to stand to and abide by such further order or judgment as may hereafter be made against said party.

**102. PAPERS, ETC. SENT TO COURT OF COMMON PLEAS.**

Sec. 9. Whenever an appeal shall be taken as aforesaid, it shall be the duty of the justice, district court or police magistrate to send all papers, together with a transcript of the proceedings in the case, to the next court of common pleas of the said county, which court shall try and determine all such appeals in the same way and manner that appeals from the courts for the trial of small causes are now tried and determined, except that upon the trial of any such appeal no notice of the production of new evidence on behalf of either party shall be required.

**103. POWER AND FEES OF OYSTER COMMISSIONERS.**

Sec. 10. The duly appointed oyster commissioners or



their assistants shall have the same power and be entitled to the same fees for the services of process in cases instituted under this act, as constables have and are entitled to receive in the courts for the trial of small causes.

#### 104. GIVING OF EVIDENCE.

Sec. 11. No person shall be excused from giving evidence in any action or proceedings taken or had under this act, on the ground that such evidence might tend to convict such witness, or render him liable to prosecution under this act, but such evidence shall not be received against such witness in any such prosecution.

#### 105. PROCEEDINGS ON SUNDAY.

Sec. 12. Proceedings under this act may be instituted on any day of the week, and the institution of such proceedings on Sunday shall be no bar to the successful prosecution of the same, and any process served on Sunday shall be as valid and effectual as if served on any other day of the week.

#### 106. PROCEEDINGS BROUGHT IN NAME OF STATE.

Sec. 13. All proceedings for the recovery of penalties pursuant to the provisions of this act shall be entitled and shall run in the name of the state of New Jersey, with one of the oyster commissioners or their assistants or a police officer or a constable, and no proceedings shall be instituted by any person not a duly commissioned oyster commissioner or their assistants or a police officer or a constable of this state.

#### 107. PENALTY ON SECOND CONVICTION.

Sec. 14. In all cases where a person shall be convicted a second time, double the penalty prescribed shall be imposed upon such second conviction, and it is hereby made the duty of every person making the complaint pursuant to the provisions of this act, who has reason to believe that the accused has been previously convicted, to lay such information before the justice of the peace, district court or police magistrate, and produce such proof of the same as shall be admissible.

## 108. REPEALER. PROVISIO.

Sec. 15. All acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed; *provided*, that such repealer shall not be taken or construed to interfere with any prosecutions now pending or which may hereafter be begun for the violation heretofore of any such laws.

NOTE.—In June, 1916, two schooners were seized in Maurice River, by common informers, upon the charge that non-residents had been employed thereon while said schooners were being used by the owners thereof in taking plants from natural oyster beds above the Southwest Line in Delaware Bay. Information was thereupon given to two justices of the peace, alleging a violation of the Seventh Section of the Act of 1846 (Section 41 *supra*). After hearing, judgments were entered condemning these schooners and ordering same sold by a constable at public auction. On certiorari, the Supreme Court held in *Bradford vs. De Luca and Kotok, justices of the peace*, 90 N. J. L. 434, that the Court of Two Justices of the Peace, established by Section 9 of the Act for the preservation of clams and oysters (Section 43 *supra*) had been abolished, at least as to violation of the law relating to the taking of natural seed oysters and clams, and that all proceedings for the violation of those laws must be under the provisions of this act of March 23, 1900. The judgments of condemnation were set aside, with costs. On a subsequent rule to show cause, the Court, in an unreported opinion, (*Hillman vs. De Luca and Kotok*, June Term 1918) held that as the two justices of the peace were without colorable jurisdiction in these cases there was no abuse of judicial discretion in imposing costs upon them under the authority of Section 10 of the Certiorari Act.

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AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE SCIENTIFIC INVESTIGATION OF OYSTER PROPAGATION," APPROVED MARCH TWENTY-FIRST, ONE THOUSAND NINE HUNDRED AND ONE.

Approved May 13, 1907.

109. STATIONS FOR INVESTIGATING OYSTER PROPAGATION. EQUIPMENT. ANNUAL REPORT. (P. L. 1907, p. 434.)

Sec. 1. The director of the New Jersey Agricultural College Experiment Station at New Brunswick is hereby authorized to establish and to maintain one or more stations for the scientific investigation of oyster propagation and other ostracultural problems, said station or stations to be situated at some point or points in the oyster-growing sections of this

state; to procure a boat or boats adapted to the prosecution of the aforementioned research work; to have the same equipped with suitable apparatus; to engage such expert or experts and the services of such other persons as may be needed in the maintenance of the ostracultural studies so undertaken, and to transmit annually to the governor a full and detailed report of the scientific operations under this act in the reports of the agricultural college experiment stations; the amount authorized to be expended under the provisions of this act shall not exceed the sum of twelve hundred dollars in any one year; *provided*, that no moneys shall be drawn from the state treasury for the purposes of this act until the same shall have been specifically appropriated according to law. (a)

(a) The original act consisted of but one section.

NOTE.—See P. L. 1901, p. 226, for original act.

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AN ACT TO PROVIDE FOR THE MARKING AND DESIGNATING OF  
THE CHANNELS OF THE BAYS, THOROUGHFARES AND SOUNDS  
FLOWED BY TIDE WATER IN THE COUNTIES OF OCEAN, ATLANTIC  
AND CAPE MAY.

Approved June 12, 1906.

110. NAVIGABLE WATERS INDICATED. (P. L. 1906, p. 673.)

Sec. 1. It shall be the duty of the persons designated by this act annually, on or before the first day of June, to stake, buoy, mark, or otherwise indicate, to the best of such person's ability, such channels in or beds of bays, thoroughfares and sounds as may be navigable, flowed by tide water in the counties of Ocean, Atlantic and Cape May.

111. OYSTER SUPERINTENDENTS TO ACT.

Sec. 2. The duty required by this act shall be performed by the oyster superintendent of the several districts of Ocean,

Atlantic and Cape May counties, each superintendent to have charge of all waters included in his district. Where there exists no oyster superintendent for any of said counties the oyster superintendent for the adjoining district shall perform the duty.

112. ASSISTANTS AND MATERIAL. PROVISIO.

Sec. 3. The said superintendent shall have power to provide all stakes, buoys, signs, markers and other materials necessary to carry out the provisions of this act, and may secure and pay for the services of persons in the said districts for the purpose of ascertaining the locations of channels; *provided, however*, that said superintendent shall in no case contract for such work or materials to an amount in excess of the moneys appropriated for that purpose.

113. NOT TO INTERFERE WITH FEDERAL BUOYS.

Sec. 4. In carrying out the purpose of this act no buoy, stake, sign or marker shall be placed near any buoy maintained by the Government of the United States, nor placed so as to interfere with the purpose thereof.

114. NOTICE OF MARKINGS.

Sec. 5. The said oyster superintendent shall give public notice annually on or before June fifteenth of the fact that channels have been marked as required by this act, and in said notice inform the public of the nature of said markings and how they may be read and understood.

115. SALARY OF SUPERINTENDENTS. (As amended P. L. 1907, p. 568.)

Sec. 6. Each superintendent shall receive annually, as compensation for the duty required by this act, the sum of one hundred dollars, payable July fifteenth, for each district in which such channel shall be so designated, and shall be allowed for the materials and services necessary to carry this act into effect the additional sums of four hundred dollars for the district embraced by Ocean county, four hundred dollars



for the district embraced by Atlantic county and six hundred dollars for the district embraced by Cape May county.

**116. ANNUAL STATEMENT.**

Sec. 7. Said superintendent shall annually, on or before July fifteenth, file with the Comptroller an itemized statement, verified by oath, of the expenses incurred by him by authority of this act.

**117. REMOVAL OF MARKERS A MISDEMEANOR.**

Sec. 8. Any person that shall willfully remove, change, mutilate or destroy any stake, buoy, sign or marker, placed by the oyster superintendent under authority of this act, shall be guilty of a misdemeanor.

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**AN ACT TO SECURE THE PURITY AND WHOLESOMENESS OF SHELL-FISH.**

Approved February 29, 1912.

**118. INSPECTION OF OYSTER AND CLAM BEDS BY STATE BOARD OF HEALTH. (P. L. 1912, p. 44.)**

Sec. 1. It shall be the duty of the Board of Health of the State of New Jersey to inspect, or cause to be inspected, as often as said board may deem necessary, the various oyster and clam beds and other places within the jurisdiction of or forming a part of the State of New Jersey from which oysters, clams or other shell-fish are taken to be distributed or sold for use as food, for the purpose of ascertaining the sanitary conditions of such oyster and clam beds and other places, and the fitness of the oysters, clams or other shell-fish in such places, or which are taken therefrom, for use as food.

**119. BEDS DANGEROUS TO HEALTH CONDEMNED. (As amended P. L. 1918, p. 490.)**

Sec. 2. If the State Department of Health discovers that

any oyster or clam bed, or other place from which oysters, clams or other shell-fish are or may be taken is subject to pollution or to any other condition which may render the oysters, clams or other shell-fish in such places, or which may be taken therefrom, dangerous to health, it shall be the duty of said board to immediately condemn such oyster or clam bed or other place, and to prohibit the taking of oysters, clams or other shell-fish from such places, and also to prohibit the sale, distribution, offering for sale or having in possession any such oysters, clams or other shell-fish, without a permit to so take, sell, distribute, offer to sell, or have in possession, first obtained from the State Department of Health, under such terms and regulations as they shall adopt.

#### 120. EVIDENCE OF USE AS FOOD. (P. L. 1912, p. 44.)

Sec. 3. For the purpose of this act, the distribution, sale, offering for sale, or having in possession with intent to distribute or sell any oysters, clams or other shellfish shall be prima facie evidence that such oysters, clams or other shellfish were intended for use as food.

#### 121. NO POLLUTION ALLOWABLE. PROVISIO.

Sec. 4. No excremental or other polluting matter of any kind or character whatever shall be discharged into or placed in the waters, or placed or suffered to remain upon the banks of any stream or tributary thereof or body of water in which shell-fish grow, or are or may be placed; *provided, however*, that nothing in this section shall apply to the discharge of sewage or drainage into such stream, tributary or body of water by municipalities of this State.

#### 122. RULES AND REGULATIONS.

Sec. 5. The State Board of Health shall have power to adopt, promulgate and enforce such rules and regulations as shall promote the purposes of this act and they shall also have power to make such specific orders regarding the growing and handling of shell-fish and the disposal of polluting matter which may affect the purity of shell-fish as they may deem necessary to enforce the provisions of this act.

**123. RIGHT OF ENTRY BY AUTHORITIES.**

Sec. 6. The members and employees of the State Board of Health shall have free access at all times to all oyster and clam beds, places of business and all other places where oysters, clams or other shell-fish are grown, kept, stored, had in possession with intent to distribute or sell, or sold, and also to all streams, tributaries thereof and lands adjacent thereto, the waters draining from which may come in contact with clams, oysters or other shell-fish, and shall have power to make such inspections of such places, and to take such samples of oysters, clams, other shell-fish or other substances, as they may deem necessary to carry out the purposes of this act.

**124. OBSTRUCTING OFFICIALS PROHIBITED.**

Sec. 7. No person shall obstruct or in anywise interfere with any chemist, bacteriologist, inspector or employee of the State Board of Health in the performance of any duty under this act.

**125. PENALTY. PLEADINGS.**

Sec. 8. Any person or corporation who shall violate any of the provisions of this act, or any of the rules and regulations made under authority contained in this act, or who shall disobey any order made by the State Board of Health under authority contained in section five of this act, or who shall gather with intent to distribute or sell for use as food any oysters, clams or other shell-fish from any oyster or clam bed or other place which has been condemned by the State Board of Health in accordance with the provisions of section two of this act, or who shall distribute, sell, offer or expose for sale or have in his possession for the purpose of sale any oysters, clams or other shell-fish taken from any oyster or clam bed or other place which has been condemned by said board, shall be liable to a penalty of one hundred dollars, such penalty to be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey as plaintiff. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted,

but no pleadings or process shall be set aside or invalidated by reason of any formal or technical defects therein, if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended, in the discretion of the court, as in any other action or proceeding in said court.

**126. EXECUTION ISSUED TO ENFORCE JUDGMENT. DEFENDANT MAY BE IMPRISONED. JUDGMENT AGAINST CORPORATION.**

Sec. 9. When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment, he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate as in other actions of debt.

**127. INJUNCTION TO RESTRAIN VIOLATIONS.**

Sec. 10. Whenever any person shall violate any of the provisions of this act, it shall be lawful for the Board of Health of the State of New Jersey, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State, at the relation



of said board, for an injunction to restrain such violation and for such other and further relief in the premises as the Court of Chancery shall deem proper, but the filing of such a bill, nor any of the proceedings thereon, shall not relieve any party of such proceedings from the penalty prescribed by this act for such violation.

#### 128. APPROPRIATION. PROVISIO.

Sec. 11. The sum of seven thousand five hundred dollars is hereby appropriated for the use of the State Board of Health in enforcing the provisions of this act, and said board is authorized to employ such chemists, bacteriologists and inspectors, and to purchase such apparatus and supplies, including a suitable boat, as they may deem necessary; *provided*, that no part of the sum hereby appropriated shall become available until the amount thereof has been included in either a supplemental or regular appropriation bill.

#### 129. ACTS REPEALED.

Sec. 12. An act entitled "A supplement to an act entitled 'An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof (Revision of 1907,)' approved March twentieth, one thousand nine hundred and seven," approved April fifteenth, one thousand nine hundred and eleven, and an act entitled "A further supplement to an act entitled 'An act for the preservation of clams and oysters,' approved April fourteenth, one thousand eight hundred and forty-six," approved April twenty-first, one thousand nine hundred and nine, be and the same are hereby repealed.

NOTE.—This act probably supersedes Chapter 97 of the laws of 1910, *P. L. p. 147*.

The provisions of this act with respect to leasing of condemned oyster grounds are modified by the act of March 4, 1918, *P. L. p. 995*, Sections 31 and 32 *supra*.

A SUPPLEMENT TO "AN ACT TO ASCERTAIN THE RIGHTS OF THE STATE AND RIPARIAN OWNERS IN THE LANDS LYING UNDER THE WATERS OF THE BAY OF NEW YORK AND ELSEWHERE IN THE STATE," (REVISION), APPROVED APRIL ELEVENTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-FOUR, AND THE SEVERAL SUPPLEMENTS THERETO.

Approved March 6, 1888.

130. GRANTS OR LEASES TO BE MADE FOR CERTAIN PURPOSES ONLY. (P. L. 1888, p. 140.)

Sec. 1. That no grant or lease of lands under tide-water, whereon there are natural oyster beds, shall hereafter be made by the riparian commissioners of this state, except for the purpose of building wharves, bulkheads or piers.

NOTE.—The State may grant the exclusive use of its land under water, but until such grant is made, the right to enter and fish upon it may be exercised by all the citizens of the state. *Polhamus vs. Bateman*, 60 N. J. L. 163.

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AN ACT TO PROHIBIT THE RIPARIAN COMMISSIONERS FROM GRANTING ANY SPECIAL OYSTER RIGHTS OR PRIVILEGES IN DELAWARE BAY.

Approved May 15, 1894.

131. GRANTING OF SPECIAL OYSTER PRIVILEGES PROHIBITED. (P. L. 1894, p. 309.)

Sec. 1. That the riparian commissioners shall not have the right or power, in the name of the state or otherwise, by deed, grant or lease, to give, grant or convey to any person or corporation the exclusive right or privilege to plant or take oysters from any part of Delaware Bay.

## V. ACTS APPLICABLE TO DELAWARE BAY, DELAWARE RIVER, MAURICE RIVER COVE AND RARITAN BAY.

Being act of March 24, 1899 (*P. L. 1899, p. 506*), as amended, supplemented and extended by act of March 22, 1901, approved March 22, 1901, with supplements and amendments.

### 132. STATE OYSTER COMMISSION ESTABLISHED FOR DELAWARE RIVER, DELAWARE BAY AND MAURICE RIVER COVE. (*P. L. 1901, p. 307.*)

Sec. 1. (This section is superseded by Section 1 of Chapter 116, *P. L. 1917, p. 250*, as amended by Chapter 217, *P. L. 1918, p. 781*, Section 16 *supra*.)

NOTE.—From 1871 until the passage of this act in 1899, the enforcement in the Maurice River Cove, and Delaware Bay and River of the oyster and clam law of 1846 and its supplements, had been left by the legislature to an organization of the captains of vessels licensed to engage in the business of planting and growing oysters in said waters, and the oyster planters. As finally developed, the oyster interests of this section were committed by law to the management of a committee elected by the captains and owners of vessels engaged in the business. This committee was known as the "Executive Committee of the Maurice River Cove and Delaware Bay Oyster Association." The powers and duties of this committee and its officers and employees were prescribed by law. Moneys necessary for policing the natural beds and planted grounds were raised by voluntary assessments levied upon the vessels, based upon their net tonnage. The moneys so collected were disbursed by the Executive Committee, and an annual statement was rendered by them to the association.

By the act of 1899, control of the industry in these waters was transferred from the oystermen themselves and vested in a commission appointed by the Governor. The territory involved includes about 50,000 acres of natural oyster grounds above what is known as the "southwest line," being an imaginary line running direct from the mouth of Straight Creek to Cross Ledge Lighthouse in the Delaware Bay, and, also, about 50,000 acres of land under water below said line, suitable for oyster culture and on which oysters are planted.

The gradual development of the laws relating to the industry in these waters is shown by the statutes collected in the *Comp. Stat. of N. J.*, Vol. 2, pp. 1462-1481, inclusive.

As all the pertinent acts were duplicated in the act of 1899, and inconsistent laws repealed, it has been deemed unnecessary, as well as confusing, to insert them here. They are all superseded by the act of 1899 and supplements.

While the industry was under the control of the planters and captains and owners of vessels, important litigation was conducted on their behalf which established the business on a firm basis.

Among these cases are the following: *Johnson vs. Loper*, 46 N. J. L. 321; *Grace vs. Willets*, 50 N. J. L. 414; *State vs. Polhamus*, 57 N. J. L. 348; *Bateman vs. Hollinger*, 80 Atl. Rep. 1107; *Bateman vs. Polhamus*, 60 N. J. L. 163. In the last cited case the Court of Errors and Appeals held that a riparian grantee could not obtain an exclusive

right of fishery in the public waters of the state. This litigation grew out of the making of a large number of riparian grants off Fortescue in Beadon's Cove, which included some of the most valuable natural oyster grounds in Delaware Bay. The association determined to resist the claims which the riparian grantees made to the natural oyster beds lying within the limits of their grants, and, after giving notice, made a concerted raid on the natural beds and the oysters thereon. More than fifty members of the association were arrested and indicted but the indictments were quashed. *State vs. Polhamus*, 57 N. J. L. 348.

An attempt was made to enjoin the Executive Committee from using funds of the association for the defense of its members, but the bill was dismissed. *Bateman vs. Hollinger*, 30 Atl. Rep. 1107. Luther Bateman, a riparian grantee, then sued Zebulon Polhamus, one of the raiders, for trespass, and had judgment below. This was reversed by the Court of Errors and Appeals. *Polhamus vs. Bateman*, 60 N. J. L. 163. All the grants were then revoked and the money paid therefor was refunded by the state. *P. L. 1898, p. 191*. During the pendency of this controversy, the Executive Committee also secured the passage of the act of 1894, *P. L. p. 309*, prohibiting the riparian commission from making a grant of the exclusive right or privilege to plant or take oysters from any part of Delaware Bay.

After the passage of the act of 1899, placing the oyster business in this territory under state control, litigation arose in which the constitutionality of the act was attacked but upheld. See *State vs. Corson*, 67 N. J. L. 178. Its provisions have also been upheld in the cases of *State vs. Lee*, 70 N. J. L. 368; *Id.* 74 N. J. L. 352; *Id.* 207 U. S. 67; *State vs. Hand*, 71 N. J. L. 137.

Other localities having oyster interests, have caused similar laws to be passed by the legislature, but the enforcement of all has now been committed to the new Board of Shell Fisheries created by the act of 1915. It is believed, however, that the consolidation of the various commissions has not affected the substantive law but has merely placed the responsibility for the enforcement thereof upon the new board and its appointees.

### 133. OYSTER SUPERINTENDENT. DUTIES. SALARY.

Sec. 2. The state oyster commission shall appoint a person to be known as the oyster superintendent, to hold office during the pleasure of the state oyster commission, and shall determine the amount of his compensation or salary, which shall not exceed twelve hundred dollars per annum, and which shall be paid in equal monthly payments; before entering upon the duties of his office the oyster superintendent shall give bond to the state in the sum of five thousand dollars, with good and sufficient surety, conditioned for the faithful performance of his duties, which bond shall be first approved as to sufficiency by the law judge of the said county of Cumberland; said bond shall be renewed annually; it shall be the duty of the state oyster commission to regulate and define the duties of the oyster superintendent, other than those duties specifically defined in this act.



## 134. POWER AND DUTY OF COMMISSION.

Sec. 3. The state oyster commission shall have power, and it shall be their duty, to enforce the provisions of this act and the provisions of all other acts regulating the taking, planting or cultivating of oysters in Delaware River, Delaware Bay and Maurice River Cove, in this state, in force and not repealed by this act; and in furtherance and not in limitation of the above provisions they shall have power to employ such surveyors, engineers, guards and other employees, together with all such boats, means and materials as they may deem necessary to carry into effect the provisions of this act, and for the protection of all oysters, oyster beds and grounds, and to incur such expenses as they may consider proper to fully carry out the provisions of this and the said other acts, and for the preservation and improvement of the said oyster beds or grounds.

## 135. OFFICE.

Sec. 4. The state oyster commission shall establish and maintain an office within the county of Cumberland, which shall be located at some place convenient to persons engaged in the oyster industry which office shall also be the office of the oyster superintendent; stated meetings of the state oyster commission shall be held at their office at least once a month.

## 136. EMPOWERED TO LEASE LANDS BELOW SOUTHWEST LINE.

Sec. 5. (Superseded by Section 1 of Chapter 116, *P. L. 1917*, p. 250, as amended by Chapter 217, *P. L. 1918*, p. 781, Section 16 *supra*.)

NOTE.—In *State vs. Corson*, 67 N. J. L. 178 (1901) an indictment for the alleged violation of this act was sought to be quashed and an attack was made on the provisions of Section 5 of the statute on the ground that they violated those articles of the federal constitution which guarantee equal civil rights to all citizens of the United States. The Court said:

"This portion of the statute denies the privilege of taking a lease of the state lands under water to persons who are not citizens and residents of the state, except those who, at the time of the passage of the act, were holding and using the state's lands under these waters, and had oysters planted thereon, under a usage, custom or existing law of

the state. It also denies the privilege to citizens and residents who had not been such for twelve months preceding the making of the lease, except those in the situation just above mentioned. In the case of *McCready vs. Virginia*, 94 U. S. 391, a statute of the state of Virginia, which regulated cultivation of oysters in tidal waters of that state, was attacked upon similar grounds. In disposing of the question the Supreme Court of the United States declared that each state *owns* the beds of all tide waters within its jurisdiction; that a right of fishing is a *property right*, and not a mere privilege or immunity of citizenship; that the citizens of one state are not invested by the United States Constitution with any interest in the common property of the citizens of another state and that a state may grant to its own citizens the exclusive use of lands covered by water for raising oysters, and may prohibit their use for such purposes by citizens of other states. This effectually disposes of the claim that, by this provision of the statute, citizens of other states are deprived of any rights or privileges guaranteed by the federal constitution. Nor is there anything in the claim that citizens of our own state are deprived of such rights and privileges by this legislation. As soon as it is conceded that the state is the owner in fee of lands under its tidal waters, its right to use them in such a way as in its judgment is best for the public interest necessarily follows; in exercising that right it may lease or sell such lands to whomsoever it may select for the purpose, and by doing so vest in its grantees or lessees the right to exclusively occupy the same."

### 137. TERM AND CONDITIONS OF LEASES PRESCRIBED.

Sec. 6. (Superseded by Section 2 of Chapter 116, *P. L. 1917*, p. 250, Section 17 *supra*.)

### 138. EXISTING LEASES TO HAVE PREFERENCE.

Sec. 7. Any person or persons now having ground or grounds staked up and leased under the provisions of the act to which this is a supplement, in Delaware Bay and Maurice River Cove, below the said "southwest line," shall be entitled to a renewal of his lease therefor, upon terms and conditions to be fixed and determined by the state oyster commission under the limitations and restrictions of this act, provided application for such renewal be made, in writing, and filed at the office of the state oyster commission before the expiration of said lease.

### 139. OYSTER LANDS MEASURED, MAPPED, ETC. RECORDS KEPT.

Sec. 8. (Superseded by Section 3 of Chapter 116, *P. L. 1917*, p. 250, Section 18 *supra*.)

NOTE.—In *State vs. Lee*, 70 N. J. L. 368 (1894), affirmed 74 N. J. L. 852, defendants were indicted for the unlawful dredging of oysters under Section 18 *supra*. Defendants insisted that the trial court should have directed an acquittal, because the state did not prove that the oyster bed in question had been "duly marked, buoyed and staked up" by or under the supervision of the state oyster commission. The Court said:

"We think such proof was not necessary. That commission must, according to the eighth section of the act, measure the leased lands, ascertain and locate their metes and bounds by ranges, monuments or other means so that their limits may be accurately fixed and easily located, and must make maps thereof; but any competent person may place the marks, buoys or stakes which are to render the leased bed distinguishable by inspection as private grounds."

Conviction affirmed, *Lee vs. State of New Jersey*, 207 U. S. 67.

#### 140. CERTAIN SECTIONS NOT TO BE LEASED.

Sec. 9. It shall not be lawful to make any leases embracing the whole or any part of the following named oyster beds and creeks or rivers, namely: Elder Point beds, Dividing Creek beds, Oranoaken beds, Pepper beds, and beds in Stow Creek, Cohansey Creek, Back Creek, Cedar Creek, Nantuxent Creek, Dare's Creek, Paggett's Creek, Sow and Pigs Creek, Beaton's Creek, Fishing Creek, Straight Creek, Oranoaken Creek, Dividing Creek, Maurice River, West Creek, East Creek and Dennis' Creek or any other commonly known natural oyster bed in Delaware River, Delaware Bay or Maurice River Cove, or in any creek or river emptying into said river, bay or cove.

#### 141. LICENSE TO ENGAGE IN OYSTER INDUSTRY. TONNAGE TAX.

10. The oyster superintendent shall issue a license, duly certified by himself, to each and every captain of a boat or vessel entitled by law to engage in the business of catching, planting and growing oysters in the said Delaware River, Delaware Bay and Maurice River Cove, that shall pay the license fee fixed therefor by the state oyster commission; no boat or vessel shall be used or employed in catching or taking oysters in the Delaware River, Delaware Bay or Maurice River Cove, in this state, without license for that purpose first had and obtained as herein provided; the state oyster commission is hereby authorized to fix the license fee aforesaid at any sum not exceeding two dollars per ton on the tonnage measurement of such boat or vessel; no license shall be issued for a period longer than one year; all licenses shall be numbered and recorded in a book kept for that purpose in the office of the state oyster commission; each boat or vessel

licensed shall, at all times while engaged in operating under such license, wear in plain view, upon the middle of the mainsail, one-third of the way from the head thereof, the number of said license in black figures at least fifteen inches in length; and upon the failure or neglect of any boat or vessel so licensed to wear said number as above required, such boat or vessel so neglecting or failing shall forfeit said license.

NOTE.—In *State vs. Corson*, 67 N. J. L. 178 (1901), it was held that Sections 10 and 11 of this act providing for the licensing of boats to engage in the business of catching, planting and growing oysters in the waters of this state, and basing such fee upon the tonnage of the boats, was not the laying of a duty of tonnage within the meaning of the federal constitution.

#### 142. QUALIFICATIONS OF APPLICANT FOR LEASE OR LICENSE.

##### PROVISO. OATH. (As Amended P. L. 1909, p. 14.)

Sec. 11. The state oyster commission, before issuing any lease to any person as provided for in this act, shall cause the person applying for said lease to make and file with them an oath that he is a citizen and actual resident of this state, and has been for twelve months next preceding said application; and the oyster superintendent, before issuing any license to any boat or vessel as provided for in this act, shall cause the master or captain of said boat or vessel to make and file with him an oath that said boat or vessel is wholly owned bona fide by citizens and actual residents of this state, and who have been such for twelve months next preceding; or that in the year nineteen hundred and eight said boat or vessel was actually used in the business of catching, planting and growing oysters in the Delaware Bay and Maurice River Cove; *provided, however*, that no boat or vessel owned in whole or in part by a non-resident and licensed in any other state to catch oysters on natural beds or grounds in such other state shall be licensed in this state within the same year in which such license to catch oysters in such other state shall have been or shall be issued. Such oaths may be made and taken by and before the several members of the state oyster commission and the oyster superintendent, and the state oyster commission shall have power to revoke any lease or license issued by reason of any false oath made or taken under any provision



of this act; *provided, further*, that nothing in this section contained shall apply to the renewal of any lease as provided for in sections five or seven of the act to which this act is amendatory.

#### 143. MONEYS FOR SOLE USE OF STATE.

Sec. 12. All moneys due for ground rentals, license fees, or other fees collectible under the provisions of this act, shall be received and collected by the oyster superintendent, for the sole use of the State of New Jersey, as public moneys belonging to the state, and shall be accounted for and paid over as such in manner hereinafter provided.

#### 144. FURTHER DUTIES OF OYSTER SUPERINTENDENT.

Sec. 13. The oyster superintendent shall keep an account of all fees and moneys received by him, pursuant to the provisions of this act, for the use of the state, and shall, on or before the tenth day of each month, make a full itemized statement and return, verified by oath, to the comptroller, of all moneys, collected or received as aforesaid, upon blanks containing a form of the said statement and oath, to be furnished to the oyster superintendent by the comptroller, and the said statements shall be filed in the office of the comptroller, there to remain as public records; said statements shall be audited forthwith by said comptroller, and on or before the fifteenth day of each month the said oyster superintendent shall pay over the amount of such moneys received to the state treasurer; he shall also make detailed monthly reports, verified by oath, to the state oyster commission, of the moneys collected or received by him; all bills incurred by the state oyster commission in carrying out the provisions of this act shall be certified by the State oyster commission to the state comptroller monthly for payment, and he shall draw his warrant on the state treasurer therefor; *provided, however*, such expenditure shall not exceed the amount received from the oyster superintendent as above provided; *provided, further, however*, that any excess of such receipts over the expenditure for any fiscal year shall, for the purpose of this act, be accounted as

receipts of the next succeeding fiscal year; *provided, further*, that the provisions of this section shall not apply to any money appropriated by the legislature for survey purposes.

145. TAKING OYSTERS ABOVE SOUTHWEST LINE.

Sec. 14. (Superseded by Section 5 of Chapter 116, *P. L. 1917, p. 250*, Section 20 *supra*.)

146. TAKING OYSTERS BELOW SOUTHWEST LINE.

Sec. 15. (Superseded by Section 165 *post*.)

147. NO OYSTERS TAKEN FROM LANDS NOT LEASED. EXCEPTION.

Sec. 16. No oysters shall be dredged for, caught or taken from any of the lands of the state under tidal waters of the Delaware Bay and Maurice River Cove, below a line running direct from the mouth of Straight Creek to Cross Ledge light-house, and commonly known as the "southwest line," that are not held by virtue of a lease or leases issued by the state oyster commission and duly recorded as herein provided; but nothing in this section or in the two sections immediately preceding shall apply to any of the creeks or rivers hereinbefore mentioned, nor shall be construed to prohibit the taking at any time of oysters with rakes or forks on what is commonly known as the Cape Shore, in Cape May county.

148. ROUGH CULL LAW.

Sec. 17. (Superseded by Section 12 of Chapter 116, *P. L. 1917, p. 250*, Section 27 *supra*.)

NOTE.—In *State vs. Hand*, 71 N. J. L. 137 (1904), defendant was indicted for the violation of this section which is known as the "Rough Cull Law." On review by the Supreme Court of his conviction the act was held sufficient to cover an alleged violation thereof where the basket of oysters for the test were taken from a part of such deck load which had been removed from the deck into the hold of the vessel before the officers in pursuit had reached the same.

149. DREDGING ON STAKED-UP GROUND MISDEMEANOR. (P. L. 1903, p. 642.)

Sec. 18. (Superseded by Section 166 *post*.)

NOTE.—On the trial of an indictment under this section for unlawfully dredging oysters, the state need not prove that the oyster bed has been marked, buoyed, or staked

by or under the supervision of the state oyster commission. *State vs. Lee*, 70 N. J. L. 368, affirmed 74 N. J. L. 852, and by the United States Supreme Court, *Lee vs. State of New Jersey*, 207 U. S. 67, where it was held that rights under the commerce clause of the federal constitution or under the fourteenth amendment are not infringed by this act.

In *State vs. Nelscn*, 65 N. J. L. 500, it was held that an indictment found under the section of the act of 1899 of which the above is an amendment, was not defective in its reference to the "southwest line." In *State vs. Corscn*, 65 N. J. L. 502, an indictment under the same section was quashed because of failure to allege that the land under water on which the dredging took place was held under lease made by the state oyster commission. Owing to the difficulty of conviction under this section, a supplement was passed in 1905, and this section was superseded by Section 4 of that act. See Section 166 *post*.

#### 150. CLOSED SEASON. (P. L. 1901, p. 307.)

Sec. 19. It shall be unlawful to have in possession, sell or offer for sale any oysters caught or taken from any natural oyster bed or ground where oysters naturally spawn and grow, under the tidal waters of the Delaware river or Delaware Bay, above the said "southwest line," except from and including the first day of April to and including the fifteenth day of June of each year.

NOTE.—See Section 20 *supra*.

#### 151. OYSTERS TO BE TAKEN BY DAYLIGHT ONLY.

Sec. 20. (Superseded by act of March 4, 1918, P. L. p. 780, Section 29 *supra*.)

#### 152. ARREST FOR VIOLATING OYSTER LAWS.

Sec. 21. (Superseded by Section 170 *post*.)

#### 153. LICENSE REVOKED FOR VIOLATION.

Sec. 22. (Superseded by Section 171 *post*.)

#### 154. PROHIBITIONS NOT REMOVED BY THIS ACT.

Sec. 23. Nothing in this act shall be in anywise construed to authorize or allow any person or persons, boat or vessel, to engage or be employed in the business of taking, planting or cultivating oysters in the Delaware River, Delaware Bay or Maurice River Cove, or in any creek or river tributary thereto, in this state, who or which are prohibited from engaging or being employed in said business by laws of this state in force at the time of the adoption of this act.

**155. TITLE TO LAND NOT CONFIRMED HEREBY.**

Sec. 24. Nothing in this act shall be interpreted to strengthen, confirm or verify the title of any person to any lands lying under the tidal waters of the Delaware River or Delaware Bay, above the line running direct from the mouth of Straight Creek to Cross Ledge lighthouse, and commonly known as the "southwest line."

**156. PENALTY FOR VIOLATIONS.**

Sec. 25. Any person or persons violating any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the Delaware River, Delaware Bay or Maurice River Cove, in force and not repealed by this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in state prison not exceeding three years, or both, at the discretion of the court.

**157. REPEALER.**

Sec. 26. All acts and parts of acts, general or special, inconsistent with the provisions of this act, are hereby repealed, and this act shall take effect immediately.

NOTE.—In *State vs. Corson* 67 N. J. L. 178, it was held that the punishment prescribed for violation of this statute was not necessarily cruel or unusual because the act leaves the matter of the severity of the punishment entirely in the hands of the trial court, merely fixing a maximum beyond which the Court shall not go.

**158. MARKERS FOR OYSTER BEDS. PRICE. (P. L. 1900, p. 330.)**

Sec. 27. The state oyster commission appointed under the act to which this is a supplement, shall cause to be prepared official markers for all oyster grounds leased under the provisions of the act to which this is a supplement; such markers shall display the number of lease for the ground upon which the same is to be used and the number by which each ground is designated by the lease for the same; the size of such markers and material from which the same shall be made shall be determined by the said state oyster commission, and



the oyster superintendent shall furnish to all applicants therefor as many of such official markers as shall be required to set up, and fasten at least one thereof to each corner of each ground leased to such applicant; such markers shall be furnished to all applicants therefor prior to the sixteenth day of April, in the year nineteen hundred, free of charge, and after that date the same shall be furnished to applicants at a price sufficient to fully defray all expenses of procuring and delivering such official markers to said lessee.

**159. MARKERS MUST BE MAINTAINED. PENALTY FOR NEGLECT.**

Sec. 28. Every person, firm or corporation who shall have obtained a lease or leases for oyster grounds under the provisions of the act to which this is a supplement, shall, on or before the fifteenth day of April, in the year nineteen hundred, cause to be fixed and fastened in some secure manner on the corner stakes above high-water mark of each oyster ground for which such person, firm or corporation shall have obtained a lease from said state oyster commission, at least one of the official markers of the description aforesaid, and shall keep and maintain the same, fixed and fastened above high-water mark as aforesaid at each corner of said oyster grounds, during the term of said lease and any renewal thereof; and if any lessee of any oyster ground aforesaid shall neglect or refuse to comply with the provisions of this section, said lessee or lessees shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, at the discretion of the court.

**160. PENALTY FOR REMOVAL OF MARKERS BY LESSEE.**

Sec. 29. Every lessee of any oyster ground aforesaid who shall remove or suffer or permit any official marker to be removed from any corner of said oyster ground or grounds, or shall suffer or permit the corner or corners of said oyster ground or grounds from which the marker shall be removed, either with or without the said lessee's consent, to be and

remain without an official marker of the description herein set forth and fastened as hereinbefore provided for, for the space of thirty days after said official marker has been placed in position by the lessee, shall be deemed guilty of a violation of this act and punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, at the discretion of the court, to be sued for and recovered in any court having competent jurisdiction thereof.

**161. REMOVAL OR DEFACEMENT A MISDEMEANOR.**

Sec. 30. Any person or persons who shall wilfully deface or remove any of the official markers herein provided for and fixed and fastened to or upon any oyster ground or grounds, shall be guilty of a misdemeanor.

**162. COUNTERFEITING OF MARKER A FELONY. PENALTY.**

Sec. 31. It shall be unlawful for any person or persons to imitate or counterfeit the official marker provided for in this act or use the same knowing it to be imitated or counterfeited; any person violating the provisions of this section shall be deemed guilty of a felony and on conviction thereof shall be confined in the state's prison not less than one year nor more than three years.

NOTE.—*Query*, Was this act repealed by Section 31, *P. L. 1901*, p. 319? See *P. L. 1900*, p. 330 and *P. L. 1900*, p. 396.

**163. CLOSED SEASON ABOVE SOUTHWEST LINE. (P. L. 1905, p. 65.)**

Sec. 32. No oyster shall be dredged for, caught or taken from any of the lands lying under the tidal waters of the Delaware River, Delaware Bay or Maurice River Cove, above a line running direct from the mouth of Straight Creek to Cross Ledge lighthouse, and commonly known as the "south-west line," except from and including the first day of May to and including the thirtieth day of June of each year.

NOTE.—See Section 20 *supra*.

## 164. POSSESSION OF CERTAIN OYSTERS UNLAWFUL.

Sec. 33. It shall be unlawful to have in possession, sell or offer for sale any oysters caught or taken from any natural oyster bed or ground where oysters naturally spawn and grow under the tidal waters of the Delaware River, Delaware Bay or Maurice River Cove above the said "southwest line," except from and including the first day of May to and including the thirtieth day of June of each year.

NOTE.—See Section 20 *supra*.

## 165. CLOSED SEASON BELOW SOUTHWEST LINE. PROTECTION OF OYSTERS.

Sec. 34. No oysters shall be dredged for, caught or taken from any of the lands lying under the tidal waters of the Delaware Bay and Maurice River Cove below a line running direct from the mouth of Straight Creek to Cross Ledge lighthouse, and commonly known as the "southwest line," at any time except from the first day of September to the thirtieth day of June then next, both inclusive, of each year; but the oyster superintendent or any member of the state oyster commission may, upon application, give permission, in writing, to any lessee or lessees of oyster grounds to employ such methods for the protection of his or their oysters on said grounds and for the promotion of the growth thereof during said closed season as the said superintendent or state oyster commission may deem advisable; but no oysters shall be permanently removed from said grounds during said closed season.

## 166. TRESPASSING A MISDEMEANOR.

Sec. 35. Any person or persons who shall hereafter dredge upon or throw, cast or drag an oyster dredge, or any other instrument or appliance used for catching oysters, upon any of the lands of the state lying under the tidal waters of the Delaware Bay or Maurice river cove, in this state, below the said "southwest line," other than land or ground for which such person or persons then hold a lease from the state oyster commission, under the act to which this is a supplement, or

the several acts amendatory thereof or supplementary thereto, shall be guilty of a misdemeanor.

#### 167. PERMISSION TO INSPECT UNLEASED LANDS.

Sec. 36. The oyster superintendent, or any member of the state oyster commission, may, upon application, give permission, in writing, to any prospective lessee or lessees of any unleased oyster ground or grounds, to examine and inspect, with proper appliances, any of the unleased lands of the state, below said "southwest line" for the purpose of determining the suitability or adaptability of such lands for oyster culture or propagation, but no oysters shall be permanently removed from any such lands by virtue of any such permit.

#### 168. APPLICATION OF ACT.

Sec. 37. None of the foregoing sections shall apply to any creek tributary to said Delaware Bay, Delaware River or Maurice River Cove, nor shall any of the foregoing provisions be construed to prohibit the taking at any time of oysters with rakes or forks on what is commonly known as the Cape Shore, in Cape May county.

NOTE.—See Chapter 116, *P. L. 1917*, p. 250, as amended *P. L. 1918*; p. 781, Sections 16 to 32 inclusive, *supra*.

#### 169. PENALTIES.

Sec. 38. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

#### 170. RIGHT TO ARREST ON VIEW.

Sec. 39. The members of the state oyster commission, the oyster superintendent and the several captains or masters of guard-boats, are hereby empowered, and it shall be their duty, on view, without special warrant issued for that purpose, to arrest any person engaged in the violation of any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the Delaware River, Delaware Bay, or Maurice River Cove, in force and not repealed by this act.



## 171. REVOCATION OF LICENSE.

Sec. 40. It shall be the duty of the state oyster commission to revoke the license of any boat or vessel, the owner, captain, master or person in charge of which shall violate or cause or permit to be violated any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the Delaware River, Delaware Bay or Maurice River Cove, in force and not repealed by this act; and said commission shall have power to refuse thereafter to allow any license to be issued to such boat or vessel for such period of time as the commission may fix and determine.

## 172. REPEALER.

Sec. 41. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall be deemed a public act and take effect immediately.

## 173. LANDS EXEMPT FROM LEASE. PROVISIO. (P. L. 1905, p. 460.)

Sec. 42. That hereafter no lease shall be made by the state oyster commission of the State of New Jersey for any lands under the waters of the Delaware Bay southwesterly of a line northwest from the mouth of Green Creek, Cape May county, to the intersection of such line with a line running direct from the mouth of Dennis Creek to Brandywine light-house; *provided, however*, that this prohibition shall not apply to any territory which was under lease from the state oyster commission of the State of New Jersey on the first day of February, one thousand nine hundred and five.

## 174. PROVISIONS OF ACT EXTENDED TO RARITAN BAY DISTRICT BY SUPPLEMENT APPROVED MAY 25, 1905, P. L. p. 482.

Sec. 1. The provisions of the act to which this act is a supplement, and also the provisions of an act entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal

waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey," approved March twenty-fourth, one thousand eight hundred and ninety-nine, be and the same hereby are extended to certain lands lying under the tidal water of Raritan Bay, in the State of New Jersey, to-wit, lands comprehended by the following lines: Beginning at the watch-house at Canaskonk point, on the shore of Raritan Bay; thence in a straight line to the government buoy, known as East Point buoy; thence on a true course west southwest to the point where said course intersects a line drawn on a course due north from Cliffwood point; thence on a true course south to Cliffwood point; thence along the shore line to the place of beginning.

**175. WHEN OYSTERS TAKEN. PROVISIO.**

Sec. 2. It shall be lawful for the lessees of lands described in the next preceding section and lying under the tidal waters in Raritan Bay to catch and take oysters during all or any of the months of the year, and before sunrise and after sunset; *provided*, a special permit in writing is first had and obtained from the oyster superintendent.

**176. SALARY OF OYSTER SUPERINTENDENT.**

Sec. 3. In recognition of the increased work entailed upon the oyster superintendent by reason of the passage of this act, he shall hereafter receive additional compensation of salary, determined by the oyster commission, which shall not exceed thirteen hundred dollars per annum, and which shall be paid in equal monthly payments.

**177. FOUR OYSTER COMMISSIONERS.**

Sec. 4. Hereafter the oyster commission shall consist of four members instead of three, whose qualifications for office, appointment, compensation, salary and duties shall be the same in all respects as is provided in the act to which this act is a supplement.

**178. QUORUM. TERM.**

Sec. 5. Three members of said oyster commission shall constitute a quorum at any meeting thereof, and any official

act shall be valid which has been authorized by a majority of the commissioners at any stated or special meeting thereof. The oyster commissioners shall hereafter each be appointed for a term of three years, and the four members now constituting the oyster commission shall continue to hold office during the term and time for which they have been respectively appointed.

179. PROVISIONS OF ACT EXTENDED OVER ADDITIONAL  
LANDS BY SUPPLEMENT APPROVED APRIL 22, 1907, P.  
L. p. 185.

Sec. 1. The provisions of the act to which this act is a supplement, and also the provisions of an act entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey," approved March twenty-fourth, one thousand eight hundred and ninety-nine, be and the same hereby are extended to certain lands lying under the tidal waters of Raritan Bay and Cheesequake Creek, in the State of New Jersey, to-wit: lands comprehended by the following lines: Beginning at the watch-house at Canaskonk point, on the shore of Raritan Bay; thence, in a straight line, to the government buoy, known as East Point buoy; thence, on a true course west southwest, to the south side of the boundary beacon; thence, on a true course west northwest, to the south side of the Great Beds light; thence to Conover's point on the shore of Raritan Bay; thence along the shore line to Cheesequake Creek, including all of Cheesequake Creek and its tributaries, Travis Creek and Flat Creek; thence from the government jetty at Cheesequake Creek along the shore line to the place of beginning.

NOTE.—For cases relating specially to the oyster industry in Raritan Bay, see *De Graff vs. Truesdale* (1887), 10 N. J. L. J. 90 and *Brown vs. De Graff* (1888), 50 N. J. L. 409.

All the powers and duties of the state oyster commission, oyster superintendent and other officials named in the foregoing acts, have been transferred to the Board of Shell Fisheries by the act of April 23, 1915, P. L. p. 734, Sections 1 to 15 *supra*.

## VI. ACTS RELATING EXCLUSIVELY TO ATLANTIC COUNTY.

AN ACT FOR THE BETTER REGULATION AND CONTROL OF THE TAKING, PLANTING AND CULTIVATING OF OYSTERS AND CLAMS ON LANDS LYING UNDER THE TIDAL WATERS OF THE COUNTY OF ATLANTIC, IN THE STATE OF NEW JERSEY.

Approved March 30, 1905.

180. ATLANTIC COUNTY OYSTER COMMISSION ESTABLISHED.  
(P. L. 1905, p. 145.)

Sec. 1. (Superseded by Section 1 of Chapter 116, *P. L. 1917*, p. 250, as amended by Chapter 217, *P. L. 1918*, p. 781, Section 16 *supra*.)

181. OYSTER SUPERINTENDENT. SALARY. BOND. DUTIES.

Sec. 2. The governor of this state shall appoint a person to be known as the oyster superintendent, who shall be a citizen of Atlantic county, to hold office for a term of three years, at an annual salary of one thousand dollars, and which shall be paid in equal monthly payments; before entering upon the duties of his office the oyster superintendent shall give bond to the state in the sum of five thousand dollars, with good and sufficient surety, conditioned for the faithful performance of his duties, which bond shall be first approved as to sufficiency by the law judge of the said county of Atlantic; said bond shall be for the term of three years; it shall be the duty of the state oyster commission to regulate and define the duties of the oyster superintendent, other than those duties specifically defined in this act.

182. POWER AND DUTY OF COMMISSION. (Amended *P. L. 1908*, p. 464.)

Sec. 3. The state oyster commission shall have power, and it shall be their duty to enforce the provisions of this act



and the provisions of all other acts regulating the taking, planting and cultivating of oysters in the tidal waters of Atlantic county, in this state, in force and not repealed by this act, and in furtherance and not in limitation of the above provisions they shall have power to employ such surveyors, guards and other employes as they may deem necessary, and to provide guard-boats and a sufficient number of men to protect all oyster beds and grounds in the tidal waters of said county of Atlantic, in this state; and to incur such expenses as they may consider proper to fully carry out the provisions of this and the said other acts, and for the preservation and improvement of the said oyster beds or grounds; they shall, however, before leasing any grounds set apart a portion of the lands under the tidal waters of the county of Atlantic, to be known and held as public clam grounds, and all natural seed beds, and any other lands under the tidal waters of the county of Atlantic, which the commissioners shall consider suitable and necessary for the improvement, preservation and extension of the seed beds or propagating grounds. No oysters shall be taken in any manner whatsoever from any natural seed beds, grounds or other lands under the tidal waters of the county of Atlantic which the commissioners have heretofore or may hereafter set apart as suitable and necessary for the improvement, preservation and extension of the seed beds and propagating grounds, except from and including the first day of October of any year to and including the thirtieth day of April of each succeeding year.

#### 183. OFFICE.

Sec. 4. The state oyster commission shall establish and maintain an office within the county of Atlantic, at some place convenient to persons engaged in the oyster industry, which office shall also be the office of the oyster superintendent; stated meetings of the state oyster commission shall be held at their office at least once a month.

#### 184. POWER TO LEASE LANDS UNDER WATER.

Sec. 5. (Superseded by Sections 1 and 2 of Chapter 116, *P. L. 1917, p. 250*, as amended, Sections 16 and 17 *supra*.)

185. TERMS OF LEASE. CANCELLATION FOR NON-PAYMENT OF RENT.

Sec. 6. (Superseded by Sections 1 and 2 of Chapter 116, *P. L. 1917*, p. 250, as amended, Sections 16 and 17 *supra*.)

186. WHO ENTITLED TO LEASE. PROVISIO. RENEWAL OF LEASE.

Sec. 7. Any person or persons having, on the fifteenth day of September, anno domini one thousand nine hundred and one, ground or grounds staked up in said tide-waters of Atlantic county under any present law, usage or custom, shall be first entitled to apply for and receive a lease or leases for such ground or grounds; *provided*, application therefor, in writing, be filed at the office of the state oyster commission within sixty days after this act shall take effect, in default of which application the commission shall have power thereafter to lease such ground or grounds to any resident of this state, as above provided, and at the expiration of the term of any lease the same shall be renewed to the original lessee or lessees; *provided*, such lessee or lessees apply therefor within sixty days from the expiration of the term of such lease; and if application for any lease or renewal thereof for ground or grounds named in this section is not filed within the time limited the state oyster commission shall fix a time within which the oysters upon said ground or grounds shall be removed by the person or persons owning said oysters, and shall cause notice of said time so fixed to be at once personally served upon said person or persons, and the said ground or grounds shall not be leased to others until after the expiration of the time so fixed; *provided*, that this section shall not apply to any lands set apart as seed beds or propagating grounds, as provided for in section three of this act.

187. LANDS TO BE SURVEYED AND MAPPED.

Sec. 8. (Superseded by Section 3 of Chapter 116, *P. L. 1917*, p. 250, Section 18, *supra*.)

**188. TITLE NOT CONFIRMED.**

Sec. 9. Nothing in this act shall be interpreted to strengthen, confirm or verify the title of any person to any lands excepted from leasehold by the provisions of section five of this act; *provided, however*, that any person who has held and planted grounds within the limits therein excepted shall be granted one year's time from June first, one thousand nine hundred and five, in which to remove said oysters and cultch planted thereon by him.

10. Amended *P. L. 1908*, p. 466; repealed April 11, 1910, *P. L. 398*.

**189. APPLICATION TO BE MADE UNDER OATH.**

Sec. 11. (Superseded by Section 4, Chapter 116, *P. L. 1917*, p. 250, Section 19 *supra*.)

**190. UNEXPIRED LICENSES OF SHELL COMMISSION.**

Sec. 12. All unexpired licenses issued by the state oyster shell commission previous to the time when this act shall take effect shall remain in full force and virtue for the unexpired terms thereof, and shall have the same force and effect as licenses issued by the oyster superintendent.

**191. LIST OF UNEXPIRED LICENSES.**

Sec. 13. The secretary of the state oyster shell commission is hereby required, within fifteen days after this act shall take effect, to prepare and deliver to the said oyster superintendent a written or printed statement showing the names of all persons previously licensed by said shell commission within the bounds of Atlantic county whose licenses shall not then have expired, which statement shall also show the numbers of the said licenses issued by them.

**192. RECEIPTS PAYABLE TO STATE.**

Sec. 14. All money due for ground rentals, license fees or otherwise, made collectible under the provisions of this act, shall be received and collected by the oyster superintendent, for the sole use of the State of New Jersey, as public money belonging to the state, and shall be accounted for and paid over as such in manner hereinafter provided.

## 193. MONTHLY REPORTS TO COMPTROLLER.

Sec. 15. The oyster superintendent shall keep an account of all fees and moneys received by him pursuant to the provisions of this act for the use of the state, and shall, on or before the tenth day of each month, make a full itemized statement and return, verified by oath to the comptroller, of all moneys collected or received, as aforesaid, upon blank containing form of the said statement and oath, to be furnished to the oyster superintendent by the comptroller, and the said statements shall be filed in the office of the comptroller, there to remain as public records; said statements shall be audited forthwith by said comptroller, and on or before the fifteenth day of each month said oyster superintendent shall pay over the amount of such money received to the state treasurer; he shall also make detailed monthly reports, verified by oaths, to the state oyster commission of all moneys collected or received by him; all bills incurred by the state oyster commission in carrying out the provisions of this act shall be certified by the state oyster commission to the state comptroller monthly for payment, and he shall draw his warrant on the state treasurer therefor; *provided, however*, that any excess of such receipts over the expenditure for any fiscal year shall, for the purpose of this act, be accounted as receipts of the next succeeding fiscal year; *provided further*, that the provisions of this section shall not apply to any money appropriated by the legislature for survey purposes.

## 194. UNLEASED LANDS NOT TO BE USED. (P. L. 1908, p. 444.)

Sec. 16. No oysters or clams shall be planted upon, tonged for, raked or taken from any of the unleased lands of the state under the tidal waters of the county of Atlantic; *provided*, that this section shall not prevent the taking of seed oysters from the lands set apart for state seed beds and grounds from and including the first day of October of any year to and including the thirtieth day of April of each succeeding year; *provided further*, that this section shall not prevent the taking of clams from the grounds set apart for



clamming purposes. No oysters shall be taken from any state seed beds and grounds, except between sunrise and sunset.

**195. ROUGH CULL LAW.**

Sec. 17. (Superseded by Section 12 of Chapter 116, *P. L. 1917, p. 250, supra* Section 27.)

**196. POWER TO ARREST WITHOUT WARRANT.**

Sec. 18. The members of the state oyster commission, the oyster superintendent and the several captains or masters of guard-boats are hereby empowered, and it shall be their duty on view, without special warrant issued for that purpose, to arrest any person engaged in the violation of any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Atlantic in force and not repealed by this act.

**197. REVOCATION OF LICENSE.**

Sec. 19. It shall be the duty of the state oyster commission to revoke the license of any person who shall violate, or cause to be violated any of the provisions of this act, or any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Atlantic in force and not repealed by this act; and said commission shall have power to refuse thereafter to allow any license to be issued to such person for such period of time as the commission may fix and determine.

**198. PROHIBITED PERSONS AND BOATS.**

Sec. 20. Nothing in this act shall in any wise be construed to authorize or allow any person or persons, boat or vessel to engage or be employed in the business of taking, planting or cultivating oysters in the tidal waters of Atlantic county, or any creek or river tributary thereto, in this state, who or which are prohibited from engaging or being employed in said business by laws of this state in force at the time of the adoption of this act.

**199. EXCLUSIVE RIGHTS IN LEASED LANDS.** (P. L. 1905, p. 145,  
as amended by P. L. 1910, p. 405.)

Sec. 21. No person or persons other than the lessee or lessees thereof, without the consent of such lessee or lessees first had and obtained, shall go upon, tong, dredge, take or remove any shell-fish whatsoever, soil or other material from the surface of the grounds or lands leased as hereby provided lying under said tidal waters, nor interfere with the possession and use of said grounds or lands by the said lessee or lessees, and no person or persons shall pass, throw or use a dredge upon any of the unleased oyster grounds of this state under the tidal waters of the county of Atlantic; *provided*, that any person or persons holding planted oyster ground or land leased from said State Oyster Commission may dredge upon his, her or their own leased ground or land.

**200. PENALTY FOR VIOLATION OF ACT.**

Sec. 22. Any person or persons violating any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Atlantic in force and not repealed by this act, shall be deemed guilty of misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in state prison not exceeding five years, or both, at the discretion of the court.

**201. REPEALER.**

Sec. 23. All acts and parts of acts, general or special, inconsistent with the provisions of this act are hereby repealed, and this act shall take effect immediately.

AN ACT REGULATING AND CONTROLLING THE TAKING, PLANTING, PROPAGATING AND CULTIVATING OF OYSTERS AND CLAMS ON LANDS LYING UNDER THE TIDAL WATERS OF CERTAIN PORTIONS OF THE TUCKAHOE, MIDDLE AND GREAT EGG HARBOR RIVERS AND PATCONG CREEK AND OTHER TRIBUTARIES OF THE TUCKAHOE, MIDDLE AND GREAT EGG HARBOR RIVERS, WHICH PORTIONS LIE, HOWEVER, WITHIN THE BOUNDARIES OF ATLANTIC COUNTY, IN THE STATE OF NEW JERSEY.

Approved April 11, 1910.

292. CERTAIN LANDS MAY BE LEASED. (P. L. 1910, p. 401, as amended by P. L. 1915, p. 380.)

Sec. 1. The State Oyster Commission having control of such land lying under the tide-waters of such portions of the Tuckahoe River and tributaries thereof as shall lie within the boundaries of Atlantic county, of Middle River and the tributaries thereof and of Great Egg Harbor River, and the tributaries thereof, above a line drawn from a point on the southwest side of Tuckahoe River known as Broad Reach Point, thence northeasterly to a point in Great Egg Harbor River on the northwest bank thereof, opposite the upper point of Upper Nuckerson island, thence southeasterly across Great Egg Harbor River to Huges Point and of Patcong Creek in Atlantic county above or northwardly from a line drawn from South Point on the west bank to the southerly point of Doles island in said creek, shall have power and are hereby directed to lease to applicants thereof any of the lands of the State lying under the above sections of the aforesaid tidal waters; said lands so leased to be exclusively enjoyed by such lessee or lessees for the taking, planting, propagating and cultivating of oysters, the provisions of any act of the Legislature of New Jersey relating to or respecting the regulation and control of the taking, planting, propagating and cultivating of oysters and clams on lands lying under the above portions of the above tidal waters to the contrary notwithstanding; said leases, however, to be issued under and subject to the following conditions and limitations, to-wit:

(a) No lease shall be for a period exceeding ten years, but

each lessee or lessees, however, shall have the right to one renewal of his or their lease for a period not exceeding ten years and no lease shall be made for less than two acres. Any lessee or lessees, may at any time transfer his or their lease to any person or persons.

(b) There shall be charged and paid for such lease an annual rental of two dollars per acre, payable for the first year when lease is granted and for each succeeding year within thirty (30) days after the beginning of said year, and in case of the failure to pay said rental, such lease shall be forfeited and void and such lands shall again be leased as hereby provided for; *provided, however*, that no lease shall be forfeited by failure to perform any conditions required by this act until said commission shall have first given the lessee or lessees an opportunity to be heard thereon after notice as hereinafter provided for.

(c) In case any lessee or lessees fails to plant, work or otherwise improve the grounds leased within one year from date of such lease, or fails, neglects or refuses to plant, work or otherwise improve the grounds leased for two consecutive years at any time during the continuance of said lease, then such lease shall become forfeited and void and such lands be again leased as hereby provided for.

(d) No lease shall be made to any person not a resident of the State of New Jersey for at least one year prior to such leasing. Violations of this section shall constitute a forfeiture of such lease.

(e) Nothing in this act shall be construed to give said commissioners any jurisdiction or control over any lands to which the riparian grant has been made by the Riparian Commissioners of this state.

#### 203. REPEALED.

Sec. 2. Repealed April 8, 1915. *P. L. 382.*

#### 204. FISHERY RIGHTS PROTECTED.

Sec. 3. Nothing herein shall be construed so as to modify, change or interfere with any right of fishing in said tidal



waters and no such lease shall abrogate or destroy any such fishing right now existent and upon which taxes are now paid. This act shall in no way affect leases heretofore made under the laws of this state for lands to be used for the planting of oysters and no lease made for such planting grounds to any person shall prevent such person from securing leases under this act.

#### 205. LAWS APPLICABLE.

Sec. 4. The provisions of the laws of the state respecting the state oyster commission and state oyster superintendent now established in Atlantic county respecting and relating to the giving of notice of intended forfeiture of leases, removal of oysters and clams from forfeited grounds, measuring, locating, and mapping of leased grounds, recording of leases, form of application, payment of rentals to the state, arrest for violations of the provisions of this act, shall apply to the proceedings and acts required and permitted to be done by this act when not inconsistent with the provisions hereof; and the provisions of this act shall be applicable to all lands under the sections of the tidal waters first herein set forth, notwithstanding the setting apart heretofore of any such lands or part thereof as public clam grounds. Every applicant shall deposit with his application such sum not exceeding the rental thereof as the state oyster commission shall determine, and if the applicant fails to accept such lease such sum so deposited shall be applied to the payment of costs of surveying and locating tract applied for.

#### 206. EXCLUSIVE RIGHT TO LEASED GROUND. PENALTY FOR VIOLATION. (P. L. 1910, p. 401, as amended by P. L. 1915, p. 382.)

Sec. 5. No person other than the lessee or lessees thereof without the consent of such lessee or lessees shall go upon, tong, dredge, take or remove any shell-fish whatsoever, soil, or other materials from the surface of the beds or lands leased as hereby provided, lying beneath said tidal waters, nor interfere with the possession and use of said lands by said lessee

or lessees and any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the State Prison not exceeding five (5) years, or both, at the discretion of the court.

NOTE.—All the powers and duties of the officials named in the acts under the foregoing subdivision have been transferred to the Board of Shell Fisheries by the act of April 23, 1915. *P. L. p. 734*, Sections 1 to 15 *supra* and substantially all the provisions of this act of April 11, 1910, have been superseded by Chapter 116, *P. L. 1917, p. 250*, as amended by Chapter 217, *P. L. 1918, p. 781*, Sections 16 to 32 *supra*.

This act is constitutional and a lease of oyster lands executed thereunder is valid. *Smith vs. Willetts, 81 N. J. L. 370.*

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## VII. ACTS RELATING EXCLUSIVELY TO OCEAN COUNTY.

### AN ACT TO PROTECT THE PLANTING AND CULTIVATING OF OYSTERS IN THE TIDE-WATERS OF THE COUNTY OF OCEAN.

Approved May 11, 1886.

#### 207. RIGHT TO USE GROUNDS UNDER TIDE-WATER IN OCEAN COUNTY FOR CULTIVATION OF OYSTERS CONFIRMED. (P. L. 1886, p. 343.)

Sec. 1. That any person or persons, citizens of this state, now or hereafter holding, using or occupying any grounds lying under the tide-waters of the county of Ocean, for the planting or cultivating of oysters thereon, not now known and recognized as natural oyster-seed beds, from which there is now gathered seed or young oysters for planting purposes, shall be confirmed in their holding or right to use such grounds for the purpose of planting and cultivating of oysters, and the oysters planted and growing thereon shall be the personal property of the person or persons holding, using or occupying the grounds as aforesaid; *provided*, the said grounds shall have been marked by proper stakes, buoys or suitable monu-

ments, and oysters shall have been actually planted upon the grounds so marked off.

**208. AUTHORITY TO PLANT OYSTERS. PENALTY.**

Sec. 2. That upon the grounds now or hereafter held, used or occupied as aforesaid, the person or persons holding, using or occupying the same may plant, cultivate and gather oysters; they may shell said grounds and gather the oysters that may grow thereon, and all oysters on said grounds shall be deemed and taken to be their personal property; and every person or persons who shall gather, catch or take oysters, clams or shells from any lot of ground held, used or occupied as aforesaid, without the permission of the person or persons holding, using or occupying the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not greater than one hundred dollars, or be confined in the county jail for a period not exceeding six months, or both, at the discretion of the court.

**209. CLAM GROUNDS RESERVED.**

Sec. 3. That no grounds now used and set apart for clamming purposes in said county shall be occupied and used for the purpose of planting or cultivating oysters.

**210. STAKES NOT TO IMPEDE NAVIGATION.**

Sec. 4. That all stakes used for the purpose aforesaid shall be elastic and yielding, and shall not impede navigation nor interfere with the drawing of seines in any place now established and customarily used for seine fishing.

**211. WHO DEEMED TRESPASSERS. PLANTED OYSTERS FORFEITED.**

Sec. 5. That any person or persons who shall plant oysters upon any of the natural oyster beds lying under the waters aforesaid, now known and recognized as natural oyster beds, and from which there is now gathered seed or young oysters for planting purposes, shall be deemed trespassers, and such planted oysters shall be forfeited to the public, who shall have

the right and privilege of going upon said beds and taking said planted oysters and converting the same to their own use at any time when it is now lawful to take oysters from said natural beds.

## 212. NO TITLE AGAINST STATE.

Sec. 6. That nothing in this act contained shall give any person or persons the right or title to any of said lands as against the state, and the state may at any time alter or repeal this law, or the riparian commissioners may make grants the same as if this act had not been passed.

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AN ACT FOR THE BETTER REGULATION AND CONTROL OF THE  
TAKING, PLANTING AND CULTIVATING OF OYSTERS AND CLAMS  
ON LANDS LYING UNDER THE TIDAL WATERS OF THE COUNTY  
OF OCEAN, IN THE STATE OF NEW JERSEY.

Approved March 26, 1902.

## 213. OCEAN COUNTY OYSTER COMMISSION ESTABLISHED. (P. L. 1902, p. 170.)

Sec. 1. (Superseded by Section 1 of Chapter 116, *P. L. 1917 p. 250*, as amended by Chapter 217, *P. L. 1918, p. 781*, Section 16 *supra*.)

## 214. OYSTER SUPERINTENDENT. TERM. SALARY. BOND. DUTIES. (P. L. 1909, p. 293.)

Sec. 2. The Governor of this state shall appoint a person to be known as the oyster superintendent, who shall hold his office for a term of three years and until his successor is appointed and qualified, at an annual salary of one thousand dollars, and which shall be paid in equal monthly payments; before entering upon the duties of his office, the oyster superintendent shall give bond to the state in the sum of five thou-



sand dollars with good and sufficient surety, conditioned for the faithful performance of his duties, which bond shall be first approved as to sufficiency by the law judge of the said county of Ocean; said bond shall be renewed annually. It shall be the duty of the state oyster commission to regulate and define the duties of the oyster superintendent, other than those duties specifically defined in this act.

**215. POWERS AND DUTIES OF COMMISSION. (P. L. 1902, p. 170.)**

Sec. 3. The state oyster commission shall have power, and it shall be their duty to enforce the provisions of this act, and the provisions of all other acts regulating the taking, planting or cultivating of oysters in the tidal waters of Ocean county, in this state, in force and not repealed by this act, and in furtherance and not in limitation of the above provision they shall have power to employ such surveyors, guards and other employes as they may deem necessary; and to provide guard-boats and a sufficient number of men to protect all oyster beds and grounds in the tidal waters of said county of Ocean, in this state; and to incur such expenses as they may consider proper to fully carry out the provisions of this and the said other acts, and for the preservation and improvement of the said oyster beds or grounds; they shall, however, before leasing any grounds set apart a portion of the lands under the tidal waters of the county of Ocean, to be known and held as public clam grounds.

**216. OFFICE.**

Sec. 4. The state oyster commission shall establish and maintain an office within the county of Ocean, at some place convenient to persons engaged in the oyster industry, which office shall also be the office of the oyster superintendent; stated meetings of the state oyster commission shall be held at their office at least once a month.

**217. COMMISSION EMPOWERED TO LEASE LANDS.**

Sec. 5. (Superseded by Sections 1 and 2 of Chapter 116, *P. L. 1917, p. 250*, as amended by Chapter 217, *P. L. 1918, p. 781*, Sections 16 and 17 *supra*.)

**218. TERMS OF RENTAL. CANCELLATION OF LEASE.**

Sec. 6. (Superseded by Sections 1 and 2 of Chapter 116, *P. L. 1917*, p. 250, as amended by Chapter 217, *P. L. 1918*, p. 781, Sections 16 and 17 *supra*.)

**219. FIRST RIGHT TO LEASE. PROVISIO.**

Sec. 7. Any person or persons having, on the fifteenth day of September, anno domini one thousand nine hundred and one, ground or grounds staked up in said tide-waters of Ocean county under any present law, usage or custom, shall be first entitled to apply for and receive a lease or leases for such ground or grounds; *provided*, application therefor, in writing, be filed at the office of the state oyster commission within sixty days after this act shall take effect, in default of which application the commission shall have power thereafter to lease such ground or grounds to any resident of this state, as above provided; and at the expiration of the term of any lease the same shall be renewed to the original lessee or lessees; *provided*, such lessee or lessees apply therefor within sixty days from the expiration of the term of such lease; and if application for any lease or renewal thereof for ground or grounds named in this section is not filed within the time limited, the state oyster commission shall fix the time within which the oysters upon said ground or grounds shall be removed by the person or persons owning said oysters, and shall cause notice of said time so fixed to be at once personally served upon said person or persons, and the said ground or grounds shall not be leased to others until after the expiration of the time so fixed.

**220. SURVEYS AND MAPS.**

Sec. 8. (Superseded by Section 3 of Chapter 116, *P. L. 1917*, p. 250, Section 18, *supra*.)

**221. TITLE TO LANDS NOT CONFIRMED. PROVISIO.**

Sec. 9. Nothing in this act shall be interpreted to strengthen, confirm or verify the title of any person to any

lands excepted from leaseholds by the provisions of section five of this act; *provided, however*, that any person who has held and planted grounds within the limits therein excepted shall be granted two years' time from June first, one thousand nine hundred and two, in which to remove said oysters and cultch planted thereon by him.

**222. REPEALED.**

Sec. 10. Amended *P. L. 1903, p. 638*; repealed April 1, 1910, *P. L. p. 99*.

**223. QUALIFICATIONS OF LESSEE AND LICENSEE.**

Sec. 11. The state oyster commission, before issuing any lease to any person as provided for in this act, shall cause the person applying for said lease to make and file with them an oath that he is a citizen and actual resident of this state, and has been for twelve months next preceding such application, and that he will properly plant or cause to be planted and cultivate oysters thereon; and the oyster superintendent, before issuing any license to any person to catch oysters or engage in the oyster business shall cause the person applying for such license to make and file with him an oath that he is a citizen and actual resident of this state, and has been for twelve months next preceding said application; such oaths may be made and taken by and before the several members of the state oyster commission and the said oyster superintendent; and the state oyster commission shall have power to revoke any lease or license issued by reason of any false oath.

NOTE.—See Section 4 of Chapter 116, *P. L. 1917, p. 250*, Section 19 *supra*.

**224. LICENSES OF SHELL COMMISSION TO REMAIN IN FORCE.**

Sec. 12. All unexpired licenses issued by the state oyster shell commission previous to the time when this act shall take effect, shall remain in full force and virtue for the unexpired terms thereof, and shall have the same force and effect as licenses issued by the oyster superintendent.

**225. LIST OF LICENSES TO BE FURNISHED OYSTER SUPERINTENDENT.**

Sec. 13. The secretary of the state oyster shell commission is hereby required, within fifteen days after this act shall take effect, to prepare and deliver to the said oyster superintendent, a written or printed statement showing the names of all persons previously licensed by said shell commission within the bounds of Ocean county whose licenses shall not then have expired; which statement shall also show the numbers of the said licenses issued by them.

**226. FEES AND RENTS COLLECTIBLE. PAYABLE TO STATE.**

Sec. 14. All moneys due for ground rentals, license fees or otherwise made collectible under the provisions of this act, shall be received and collected by the oyster superintendent, for the sole use of the State of New Jersey, as public money belonging to the state, and shall be accounted for and paid over as such in manner hereinafter provided.

**227. REPORTS TO COMPTROLLER AND COMMISSION. (P. L. 1903, p. 638.)**

Sec. 15. The oyster superintendent shall keep an account of all fees and moneys received by him pursuant to the provisions of this act, for the use of the state, and shall, on or before the tenth day of each month, make a full itemized statement and return, verified by oath, to the comptroller, of all money collected or received as aforesaid, upon blank containing form of the said statement and oath, to be furnished to the oyster superintendent by the comptroller, and the said statements shall be filed in the office of the comptroller, there to remain as public records; said statements shall be audited forthwith by said comptroller, and on or before the fifteenth day of each month said oyster superintendent shall pay over the amount of such money received to the state treasury; he shall also make detailed monthly reports, verified by oath, to the state oyster commission of all moneys collected or received by him; all bills incurred by the state oyster commission in carrying



out the provisions of this act shall be certified by the state oyster commission to the state comptroller monthly, for payment, and he shall draw his warrant on the state treasury therefor; *provided, however*, that any excess of such receipts over the expenditure for any fiscal year shall, for the purpose of this act, be accounted as receipts of the next succeeding fiscal year; *provided, further*, that the provisions of this section shall not apply to any money appropriated by the legislature for survey purposes.

**228. TONGING IN OCEAN COUNTY. (P. L. 1903, p. 638.)**

Sec. 16. No oysters or clams shall be tonged for, raked, or taken from any of the unleased lands of the state under tidal waters of the county of Ocean, *provided*, that this section shall not prevent the taking of seed oysters from the lands set apart for state seed beds from and including the first day of October to and including the thirtieth day of April of each year; *provided further*, that this section shall not prevent the taking of clams from the grounds set apart for clamming purposes; no oysters shall be taken from any leased lands or state seed beds except between sunrise and sunset.

**229. ROUGH CULL LAW.**

Sec. 17. (Superseded by Section 12 of Chapter 116, *P. L. 1917, p. 250*, Section 27 *supra*.)

**230. POWER OF ARREST.**

Sec. 18. The members of the state oyster commission, the oyster superintendent and the several captains or masters of guard-boats are hereby empowered, and it shall be their duty, on view, without special warrant issued for that purpose, to arrest any person engaged in the violation of any of the provisions of this act or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Ocean, in force and not repealed by this act.

**231. LICENSE MAY BE REVOKED.**

Sec. 19. It shall be the duty of the state oyster commission to revoke the license of any person who shall violate or cause to be violated any of the provisions of this act or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Ocean in force and not repealed by this act; and said commission shall have power to refuse thereafter to allow any license to be issued to such person for such period of time as the commission may fix and determine.

**232. CONSTRUCTION OF ACT.**

Sec. 20. Nothing in this act shall be in anywise construed to authorize or allow any person or persons, boat or vessel, to engage or be employed in the business of taking, planting or cultivating oysters in the tidal waters of Ocean county, or any creek or river tributary thereto, in this state, who or which are prohibited from engaging or being employed in said business, by laws of this state in force at the time of the adoption of this act.

**233. NO DREDGING ON UNLEASED GROUNDS.**

Sec. 21. No person or persons shall cast, throw or use a dredge upon any of the unleased oyster grounds of this state under the tidal waters of the county of Ocean; *provided*, that any person holding planted oyster land leased from said state oyster commission may dredge upon his own leased land.

**234. PENALTY FOR VIOLATING ACT.**

Sec. 22. Any person or persons violating any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the tidal waters of said county of Ocean, in force and not repealed by this act, shall be deemed guilty of misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in state prison not exceeding five years, or both, at the discretion of the court.

**235. REPEALER.**

Sec. 23. All acts and parts of acts, general or special, inconsistent with the provisions of this act, are hereby repealed, and this act shall take effect immediately.

**236. PENALTY FOR TONGING WITHOUT PERMISSION. (P. L. 1905, p. 337.)**

Sec. 24. No person or persons shall hereafter use any dredge, tongs or rake upon any lands leased to any one under the provisions of the act to which this is a supplement, except the lessee or lessees thereof, without permission of the lessee or lessees thereof, and any one offending against the provisions of this supplement is hereby liable to the penalty prescribed in section twenty-two of the act to which this is a supplement.

NOTE.—For cases citing and construing the Ocean County acts, see *State vs. Parker*, 57 N. J. L. 360; *State vs. Price*, 71 N. J. L. 249; *McCarter vs. Oyster Company*, 78 N. J. L. 394; *State vs. Boller*, 47 Fed. Rep. 415.

All the powers and duties of the oyster commission, oyster superintendent and other officials designated in this act are transferred to the Board of Shell Fisheries, by act of April 23, 1915, P. L. p. 734, Sections 1 to 15 *supra*.

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## VIII. ACTS RELATING EXCLUSIVELY TO SHARK RIVER.

AN ACT FOR THE REGULATION, PROTECTION AND CONTROL OF THE PLANTING, CULTIVATING AND THE GATHERING OR TAKING OF OYSTERS AND CLAMS ON LANDS COVERED WITH WATER IN SHARK RIVER, IN THE COUNTY OF MONMOUTH.

Approved March 7, 1905.

**237. SHARK RIVER CLAM AND OYSTER DISTRICT ESTABLISHED. (P. L. 1905, p. 27.)**

Sec. 1. (Superseded by Section 1 of Chapter 116, P. L. 1917, p. 250, as amended by Chapter 217, P. L. 1918, p. 781, Section 16 *supra*.)

**238. SURVEYS AND MAPS ADOPTED. FURTHER SURVEYS.**

Sec. 2. The surveys and maps heretofore made of said land and the stakes set under the provisions of the act referred to in the first section of this act shall be and hereby are adopted for the purpose of leasing the same under this act, as hereinafter provided, by the said commissioner, and the same shall be leased by him in accordance therewith, that is to say, by the tract or parcel indicated thereon and thereby; but should any of said land not have been surveyed, mapped or staked under the provisions of said act said commissioner shall proceed to have the same done, the expense thereof to be defrayed out of the rentals by him received as hereinafter provided; the commissioners appointed under the act to which reference is made in the first section hereof shall turn over and deliver to the commissioner appointed under this act all the maps, surveys, leases and records in their possession relating to said land and their duties under said prior act.

**239. LEASES. TERMS. FORFEITURE FOR NON-PAYMENT OF RENT.**

Sec. 3. (Superseded by Section 2 of Chapter 116, *P. L. 1917, p. 250*, Section 17 *supra*.)

**240. PRIOR RIGHTS OF PRESENT LESSEES. REMOVAL OF CLAMS AND OYSTERS.**

Sec. 4. Any person or persons in possession of any of the tracts or parcels of land included within the boundaries set forth in the first section of this act, under a lease or leases heretofore executed under the provisions of the act to which reference is therein made, and the supplements and amendments to said act, shall, at the expiration of such lease or leases (for which time the rights and privileges under which lease or leases are hereby preserved to such person or persons), and upon a resale of said tracts or parcels of land by the said commissioner under the next preceding section of this act, have the preference, or prior right, to a new lease or leases therefor at the annual rental or rentals which may be bid therefor, if the same shall be put up at public auction, or at



private contract, if that method shall be pursued by said commissioner; *provided*, that application therefor, in writing, be filed with the said commissioner within thirty days after the expiration of such lease or leases, in default of which said commissioner shall have the power thereafter to lease said tracts or parcels of land in the manner and form hereinabove provided; and at the expiration of any lease granted under the provisions of this act, the same may be renewed in like manner; and in the event that any of said leases are not renewed the said commissioner shall fix the time within which the oysters and clams upon the tract or parcel of land covered by such lease shall be removed by the person or persons owning the same, and he shall cause notice of said time so fixed to be personally served in the manner and form hereinabove provided upon the person or persons aforesaid, and the said tracts or parcels of land shall not be leased to others until after the expiration of the time so fixed.

#### 241. EXCLUSIVE RIGHT OF OCCUPATION.

Sec. 5. Upon the execution of any lease or leases for any tract or parcel of land under the provisions of this act, and upon the payment of the rental at the time and in the manner stipulated, the lessee or lessees and his, her or their legal representatives shall be entitled to the exclusive use and occupation of the said tract or parcel of land during the term for which the same shall be leased for the purpose of planting, growing, cultivating and taking or gathering oysters and clams thereon, subject to the said commissioner's right of forfeiture, as hereinabove provided.

#### 242. WHO MAY PLANT OYSTERS. LIABILITY FOR TRESPASSING.

Sec. 6. It shall not be lawful for any person or persons whatsoever, other than the lessee or lessees, aforesaid and their legal representatives, to plant, gather, take, injure or destroy any oysters or clams within the boundaries of any tract or parcel of land leased or rented, as herein provided,

during the term or terms for which the same may be leased or rented, without the written permission or consent of the said lessee or lessees, or his or their legal representatives first had and obtained; and if any person or persons shall enter within said boundaries without such permission or consent and injure, gather, take, or destroy any oysters or clams therein planted and growing, or commit any trespass thereon, he, she or they so trespassing shall be liable to the party injured for the first offense in treble damages, to be recovered in an action of trespass in any court having competent jurisdiction thereof; and for the second offense shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months, or both.

#### 243. RECORD TO BE KEPT. ANNUAL REPORT. COMPENSATION.

Sec. 7. Said commissioner shall keep an accurate record of all leases of any of the tracts or parcels of land by him leased under the provisions of this act, which record shall be known as a book of leases; he shall also keep a record of his official acts and proceedings, and shall collect and receive all moneys due and to become due from time to time for rentals of the tracts and parcels of land under the leases herein provided for, or from any other source by virtue of this act, he shall annually, on or before the first day of October, report, under oath, to the state comptroller his receipts and disbursements, and after said report shall be audited and approved by the state comptroller, he shall pay to the state treasurer the balance of money remaining in his hands as shown by said report; he shall receive for his services, each year, one-half of the gross receipts from said oyster and clam grounds, which amount shall be ascertained from his annual report, and shall be paid by the state treasurer on the warrant of the state comptroller, after his said report shall be audited and approved as aforesaid; said commissioner shall also annually report to the bureau of shell fisheries of this state, on or before

the first day of November, his receipts and disbursements, a memoranda of all leases entered into by him with lessees of said land; and shall also file with said bureau a copy of all maps and surveys of the land comprised within said boundaries; and when required by the chief of said bureau, shall also file any other records, papers, writings or data or reports pertaining to his office and the land over which he is to have jurisdiction by virtue of this act.

#### 244. REPEALER.

Sec. 8. All acts or parts of acts, general or special, inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

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A FURTHER SUPPLEMENT TO AN ACT ENTITLED "AN ACT FOR THE PUNISHMENT OF CRIMES" [REVISION OF 1898], APPROVED JUNE FOURTEENTH, ONE THOUSAND EIGHT HUNDRED AND NINETY-EIGHT.

Approved March 22, 1901.

#### 245. WHEN OYSTERS MAY BE TAKEN FROM SHARK RIVER. (P. L. 1901, p. 326.)

Sec. 1. It shall not be lawful hereafter for any person or persons to take or dredge oysters from Shark river, in the county of Monmouth, in this state, between the hours of six o'clock P. M. and six o'clock A. M.

#### 246. PENALTY.

Sec. 2. Any person or persons violating the provisions of this act shall, on conviction thereof, be punished by a fine of not less than ten dollars and not more than one hundred dollars.

(Superseded by act of March 4, 1918, Chapter 216, *P. L. p. 780*, Section 29 *supra*.)

NOTE.—All the powers and duties of the oyster commission mentioned in this act are transferred to the Board of Shell Fisheries by act of April 23, 1915. *P. L. p. 734*, Sections 1 to 15 *supra*.

# INDEX---DIGEST

## A.

	Page
ATLANTIC COAST, Department of.....	7
ATLANTIC COUNTY	
Marking channels in.....	54
Natural beds may be worked by daylight only.....	33
Size of clams taken in waters of.....	31, 39
Time for taking oysters in.....	29
Regulation of oyster industry in waters of.....	79
Commission, control by.....	79
Superintendent, salary, bond, duties.....	79
Power of commission.....	79
Protection of oyster beds by guard boats.....	80
Public clam beds.....	80
Seed oyster beds, closed season.....	80
Office established .....	80
Leases to be granted by commission.....	11, 80
Persons entitled to.....	81
Renewals .....	81
Leased lands to be surveyed and mapped.....	81
Right to priority of lease.....	82
Unexpired licenses by Shell Commissioners protected.....	82
Revenue payable to State.....	82
Statement to be filed with Comptroller.....	83
Unleased land not to be used.....	83
Right to stop boat and inspect oysters.....	84
Power to arrest on view.....	84
Revocation of license for violation of act.....	84
Prohibited persons and boats.....	84
Exclusive rights in leased lands.....	85
Penalty for violation of act.....	85
Additional territory subject to lease.....	86
Lease, right to.....	86
Conditions, term, acreage, rental, forfeiture.....	87
Granted to residents only.....	87
Riparian grants excluded.....	87
Rights of fishery maintained .....	87
Laws applicable .....	88
Deposit by applicant for lease.....	88
Exclusive right to leased ground.....	88
Penalty for violation of act misdemeanor.....	89



## B.

BOARD OF HEALTH	Page
(See State Board of Health)	
BOARD OF SHELL FISHERIES	
Department established by act of April 23, 1915.....	5
Name, membership, qualification.....	5
Counties represented by members.....	6
Appointment, terms, vacancies, meetings, president.....	6
Director, election and compensation.....	6
Salary and term of.....	6
How removed .....	9
Departments .....	7
Powers and duties of,	
Board of Shell Fisheries.....	7
Department of Maurice river cove.....	7
Department of Atlantic coast.....	7
Sub-departments or divisions.....	7
Employees' salaries, how fixed.....	8
Appointment and tenure of office.....	9
Annual report to Legislature.....	8
Secretary, powers and duties.....	8
Director, powers and duties.....	8
Witnesses, attendance, oath.....	8
Employees, appointments and tenure.....	9
Retention of present employees.....	10
Positions, how abolished.....	10
Codification of laws relating to Shell Fish Industry.....	9
Explanation of terms used in act.....	10
Repealer .....	11
Constitutionality of act.....	11
Power to lease lands under water.....	11
Period of rentals.....	12
Leased lands to be measured and mapped.....	13
Leases and transfers to be recorded.....	13
Oath prescribed for applicant.....	13
Taking oysters and clams from spawning ground.....	13
Tongers' licenses .....	14
Citizenship of applicant.....	15
Privilege granted by license.....	15
Certain processes of taking forbidden.....	15
Where hand-tongs to be used.....	15
Closed season .....	16
Working on leased ground without permission.....	16

# INDEX

105

## BOARD OF SHELL FISHERIES—Continued

Page

Page

Rough cull law.....	17
Power to lease condemned land.....	19
Shell fish, how removed.....	19
Bond required on removal.....	19

## BUREAU OF SHELL FISHERIES

Established by act of April 14, 1903.....	20
Chief, appointment, salary, term.....	20
Oyster Commissions to report to.....	20
Copies of maps and leases to be filed with.....	20
Office established at State House.....	21
Powers and duties of Chief of Bureau.....	21
Observation station authorized.....	21

## BURLINGTON COUNTY

Natural beds to be worked by daylight only.....	33
Owners of flats in, may plant oysters, etc.....	34
Penalty for taking planted oysters, etc.....	34
Rakes, penalty for using.....	35
Time for taking oysters in.....	29

## C.

## CAPE MAY COUNTY

Cape Shore exempt from State Control act.....	75
Certain lands exempt from lease.....	76
Dredging below established line in.....	40
Marking channels in.....	54
Time for taking oysters in.....	32

## CHANNELS

Act for marking of, in certain counties.....	54
Navigable channels to be indicated.....	54
Oyster superintendent to perform duty.....	54
Assistants and material.....	55
Federal buoys not to be disturbed.....	55
Public to be notified concerning markings.....	55
Compensation for work done under act.....	55
Annual statement to be filed.....	56
Removal of markers a misdemeanor.....	56

## CLAMS

Atlantic County size law.....	39
Beds to be inspected.....	41, 56
Catching from power boats prohibited.....	42
Dredging for, below established line.....	40
Grounds not to be used for planting oysters.....	45

CLAMS—Continued	Page
Size law for hard and soft clams.....	39
Unlawful to gather from condemned bed.....42,	58
Unlawful to gather in closed season.....	13
CODIFICATION OF LAWS RELATING TO SHELL FISH INDUSTRY .....	9
CREEKS	
Closed season in certain.....	16
Instruments, except hand-tongs, prohibited in certain.....	15
State control act not applicable to certain.....	75
Unlawful to dredge in certain.....15,	37
Unlawful to lease lands in certain.....	12
D.	
DAYLIGHT	
Clams and oysters to be taken only by.....19,	33
DELAWARE BAY AND RIVER	
Dredging prohibited in creeks tributary to.....15,	37
Act of 1894, not applicable to.....	46
Act of 1899, not applicable to.....	48
No grant of exclusive right in.....	61
Oyster laws applicable to.....	62
State Oyster Commission, jurisdiction.....	62
Superintendent, duties, salary.....	63
Commission, powers and duties of.....	64
Office established in Cumberland County.....	64
Commission empowered and directed to lease lands.....	64
Term of lease, rental per acre.....12,	65
Occupants at passage of act preferred.....	65
Grounds to be surveyed and mapped.....	65
Specified beds not to be leased.....12,	66
Vessels engaged in industry must be licensed.....	66
Qualifications of applicant for lease or license.....	67
Non-residents excluded .....	67
Application made under oath.....	67
Revenue for sole use of State.....	68
Superintendent required to account monthly.....	68
Southwest line established.....	69
Closed season, above line.....70,	73
Closed season, below line.....	74
Lands leased below line.....	69
Dredging on unleased lands prohibited.....	69
Catch to be rough culled.....	69
Penalty for illegal dredging .....	69

# INDEX

107

DELAWARE BAY AND RIVER—Continued	Page
Closed season on natural beds.....	70
Oysters to be taken by daylight only.....	70
Non-residents excluded from oyster business.....	70
Title to lands not confirmed by act.....	71
Penalty for violations.....	71
Inconsistent acts repealed.....	71
Markers for leased oyster grounds.....	71
Price, maintenance and penalty for neglect.....	72
Penalty for removing.....	72
Removal or defacement a misdemeanor.....	73
Counterfeiting of marker made felony.....	73
Closed season above southwest line.....	73
Closed season below southwest line.....	74
Dredging by person other than lessee, prohibited.....	74
Trespassing below southwest line, misdemeanor.....	74
Permission to inspect unleased land.....	75
Tributaries of Delaware bay excepted from act.....	75
Violation of act made misdemeanor.....	75
Power to arrest without warrant.....	75
License of violator to be revoked.....	76
Repealer .....	76
Certain lands exempt from lease.....	76
Act extended to Raritan bay.....	76
District defined, open season.....	77
Salary of superintendent.....	77
Commissioners, powers, quorum, term.....	77
Act further extended.....	78
DEPARTMENT OF ATLANTIC COAST.....	7
DEPARTMENT OF MAURICE RIVER COVE.....	7
DIRECTOR (See Board of Shell Fisheries)	
DREDGES	
Definition of .....	34
Penalty for carrying.....	24
Penalty for using.....	15, 22

## G.

GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS.....	22
Actions, how commenced under act.....	24
Against vessels, procedure.....	25
Atlantic County	
Marking channels in.....	54
Natural beds worked by daylight only.....	33
Size of clams taken in.....	31, 39
Time for taking oysters in.....	29



	Page
GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS—Continued	
Board of Health	
Duty to inspect oyster grounds.....	41, 56
Duty to inspect clam beds.....	41, 56
Beds and grounds, when condemned.....	56
Jurisdiction of .....	56
Inspection of oyster and clam beds.....	41
Record of inspections.....	41
Selling from condemned beds, prohibited.....	42
Duty to inspect oyster and clam beds.....	56
Polluted beds to be condemned.....	56
Evidence of use for food.....	57
Pollution prohibited .....	57
Rules and regulations, right of entry.....	58
Officials not to be hindered, penalty.....	58
Pleadings, practice, judgment, execution.....	58
Defendant may be imprisoned.....	59
Judgment against corporation.....	59
Injunction against violations.....	59
Appropriations .....	60
Burlington County	
Natural beds to be worked by daylight only.....	33
Owners of flats in, may plant oysters, etc.....	34
Penalty for taking planted oysters, etc.....	34
Rakes, penalty for using.....	35
Time for taking oysters in.....	29
Cape May County	
Dredging below established line in.....	40
Marking channels in.....	54
Time for taking oysters in.....	32
Clams	
Atlantic County size law.....	39
Beds to be inspected.....	41, 56
Catching from power boats, prohibited.....	42
Dredging for, below established line.....	40
Grounds not to be used for planting oysters.....	45
Size law for hard and soft clams.....	39
Unlawful to gather from condemned bed.....	42, 58
Creeks	
Closed season in certain.....	16
Unlawful to dredge in certain.....	15, 37
Where hand-tongs to be used.....	15
Delaware bay and river	
Act of 1894, not applicable to.....	46
Act of 1899, not applicable to.....	48

	Page
GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS—Continued	
Dredging in creeks tributary to.....	15, 37
Grant of exclusive right in, prohibited.....	61
Oyster law applicable to.....	62
Dredges	
Definition of .....	34
Penalty for carrying.....	24
Penalty for using .....	22
Great and Little Egg Harbor rivers	
Oysters may be planted between.....	27
Health, Board of	
(See State Board of Health)	
Justices of the peace	
Information before two (see note).....	25
Jurisdiction .....	40, 45
Warrant issued by.....	23
Lime, gathering oysters for, prohibited.....	23
Marsh and meadows	
Owners of, may plant oysters on.....	26, 28, 32
Monmouth County	
Time for taking oysters in waters of.....	29
Natural beds	
Shells not to be removed from.....	30, 47
Worked by daylight only.....	33
Exclusive right to, not granted.....	38
Mechanically propelled vessels not to be used on.....	40
Title confirmed to certain.....	44
Not to be planted on.....	46
Unlawful to take oysters from, in closed season.....	13
Riparian grant not to include.....	61
Navesink river	
Oysters, how taken in.....	26
Non-residents	
Mortgage on vessel not to be held by.....	35
Oysters not to be planted or grown by.....	43
Penalty for gathering clams and oysters by.....	31
Ocean County	
Marking channels in.....	54
Natural beds in, to be worked by daylight only.....	33
Officers	
Compensated, how .....	36
Penalty for resisting.....	25
Power to arrest offenders .....	36

	Page
GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS—Continued	
Special, how appointed.....	36
Penalties for	
Using dredges in certain waters.....	15, 22
Selling oysters out of season.....	23
Gathering oysters for lime.....	23
Carrying dredge .....	24
Non-resident gathering clams and oysters.....	31
Resisting officer .....	25
Breaking down fences.....	26
Taking oysters without permission.....	16, 28, 34, 37
Selling clams under size.....	31
Violating provisions of act.....	33
Taking oysters before daylight.....	33
Using rake in certain waters.....	35
Dredging in certain creeks.....	37
Below established line.....	40
On bed duly staked up.....	38
For planted oysters without permission.....	38
Taking undersized clams.....	39
Gathering oysters from condemned ground.....	42, 56
Gathering clams from condemned ground.....	42, 56
Using power boat on clam ground.....	42
Non-residents planting or growing oysters.....	43
Removing stakes from planting grounds.....	46
Shells from natural beds.....	47
Uniform procedure to enforce penalties.....	48
Jurisdiction, procedure, arrest without warrant.....	49
Costs and fees, hearing.....	50
Disposition of moneys recovered.....	51
Appeal allowed, record remitted.....	51
Powers and duties of commissioners.....	51
Evidence, arrest on Sunday.....	52
Proceedings to be in name of State.....	52
Second conviction .....	52
Channel act, violation of.....	56
Private grounds	
Oysters on, personal property.....	44
Persons occupying, confirmed in title.....	44
Trespassing on, a misdemeanor.....	44
Vessel unlawfully used on, forfeited.....	45
Clam grounds not to be used as.....	45
Stakes on, shall be yielding.....	45
Natural beds not to be included in.....	46

# INDEX

111

Page

## GENERAL ACTS RELATIVE TO CLAMS AND OYSTERS—Continued

Title to, not to run against State.....	46
Act not applicable to Delaware bay.....	46
Stakes not to be removed from.....	46
Propagation of oysters	
Annual appropriation for, report.....	53
Equipment .....	53
Experiment station .....	53
Scientific investigation of.....	53
Riparian Commission	
Grant by, not to include oyster beds.....	61
Exclusive privilege, not to be granted by.....	61
Shells, not to be removed .....	30
Stakes	
When must be set.....	28
How set .....	29, 45
Removal of .....	46
Time for taking oysters in	
Atlantic County .....	29, 33
Burlington County .....	29, 33
Cape May County.....	32
Certain Creeks .....	37
Monmouth County .....	29
Time for raking beds.....	22
Tongers	
Act for licensing.....	14
Licenses, by whom granted.....	14
Vessels	
Forfeited if illegally used.....	35, 38, 41, 42, 45
How proceeded against and forfeited.....	25
Mechanically propelled, unlawful.....	40, 42
Mortgage on, to non-resident, unlawful.....	35
Must be owned by residents.....	35
Not to carry dredges.....	24

## H.

### HEALTH, BOARD OF

(See State Board of Health)

## J.

### JUSTICES OF THE PEACE

Information before two (see note).....	25
Jurisdiction .....	45
Warrant may be issued by.....	23



## L.

LEASES OF LANDS UNDER WATER IN	Page
Atlantic County .....	11
Delaware bay .....	11
Ocean County .....	11
Raritan bay .....	11
Shark river .....	11

## M.

## MARKERS

Required on leased lands in Delaware bay.....	71
---	----

## MAURICE RIVER COVE (See Delaware Bay)

Department of.....	7
--------------------	---

## N.

## NATURAL BEDS

Shells not to be removed from.....	30,	47
Worked by daylight only.....		33
Exclusive right to, not granted.....		38
Mechanically propelled vessels not to be used on.....		40
Title confirmed to certain .....		44
Not to be planted on.....		46
Unlawful to take oysters from, in closed season.....		13
Riparian grant not to include.....		61
Certain, not to be leased.....		66
Closed season on.....	13,	70

## NON-RESIDENTS

Prohibited from		
Gathering oysters, etc.....		31
Holding mortgage on vessel.....		35
Planting or growing oysters.....		43
Leasing ground in Delaware bay.....		11
Operating vessel in Delaware bay.....		67
Excluded in Atlantic County.....	11,	84
Excluded in Delaware bay.....	11,	70
Excluded in Ocean County.....		11
Excluded from holding tongs license.....		15

## O.

## OCEAN COUNTY

Natural beds in, to be worked by daylight only.....	33
Channels in, how marked.....	54

# INDEX

113

## OCEAN COUNTY—Continued

Page

Acts relating exclusively to.....	89
Holders of staked grounds confirmed in title.....	89
Holders of staked grounds may plant oysters.....	90
Penalty for gathering oysters without permission.....	90
Clam grounds not to be used for planting oysters.....	90
Stakes not to impede navigation.....	90
Planters on natural beds deemed trespassers.....	90
Oysters planted on natural beds, forfeited.....	90
Act not to give title against State.....	91
Riparian Commissioners may make grants.....	91
Oyster Commission for Ocean County created.....	91
Superintendent, salary, bond, duties.....	91
Powers and duties of Commission.....	92
Office established in Ocean County.....	92
Territory subject to lease.....	92
Leases, first right to.....	93
Lands to be surveyed and mapped.....	93
Title not confirmed.....	93
Lessee and licensee, qualifications of.....	94
Prior leases to remain in force.....	94
List to be furnished superintendent.....	95
Fees and rents collectible.....	95
Reports by superintendent.....	95
Tonging, regulated .....	96
Offender may be arrested on view.....	96
License of, may be revoked.....	97
Non-residents excluded from privileges.....	97
Dredging on unleased land, prohibited.....	97
Penalty for violating act.....	97
Repealer .....	98
Tonging on leased land, prohibited.....	98

## P.

### PROPAGATION OF OYSTERS

Appropriation for .....	54
Annual report .....	54
Equipment .....	54
Experiment station established.....	53
Scientific investigation of.....	53

### PENALTIES

Using dredges in certain waters .....	15,	22
Selling oysters out of season .....		23
Gathering oysters for lime.....		23
Carrying dredge .....		24

## PENALTIES—Continued

	Page
Non-resident gathering clams and oysters.....	31
Resisting officer .....	25
Breaking down fences .....	26
Taking oysters without permission.....16, 28, 34,	37
Selling clams under size.....	31
Violating provisions of act.....	33
Taking oysters before daylight.....	33
Using rake in certain waters.....	35
Dredging in certain creeks.....	37
Below established line.....	40
On bed duly staked up.....	38
For planted oysters without permission.....	38
Taking undersized clams.....	39
Gathering oysters from condemned ground.....42,	56
Gathering clams from condemned ground.....42,	56
Using power boat on clam ground.....	42
Non-residents planting or growing oysters.....	43
Removing stakes from planting grounds.....	46
Shells from natural beds.....	47
Uniform procedure to enforce penalties.....	48
Jurisdiction, procedure, arrest without warrant.....	49
Costs and fees, hearing.....	50
Disposition of moneys recovered.....	51
Appeal allowed, record remitted.....	51
Powers and duties of commissioners.....	51
Evidence, arrest on Sunday.....	52
Proceedings to be in name of State.....	52
Second conviction .....	52
Channel act, violation of.....	56
Failure to rough cull in Delaware bay.....	17
Illegal dredging in Delaware bay.....	74
Violations made misdemeanor.....	71
Neglect to place markers.....	72
Removal of markers.....	72
Counterfeiting of markers.....	73
Dredging by other than lessee.....	74
Violation of State control act.....	75
Atlantic County act.....	85
Ocean County act.....90,	97
Shark river act.....100, 102	

## R.

## RARITAN BAY

State control act extended to.....	76
Territory included .....	76

# INDEX

115

RARITAN BAY—Continued	Page
Open season in.....	77
Superintendent, salary .....	77
Commissioners, number, quorum.....	77
Powers, duties and term.....	77
Act further extended.....	78
RIPARIAN COMMISSION	
Grants of exclusive privileges by, prohibited.....	61
Grants of natural oyster beds by, prohibited.....	61
Not affected by Atlantic County act.....	87
Not affected by Ocean County act.....	91
ROUGH CULL LAW	
Catch to be culled.....	17, 47

## S.

SHARK RIVER	
Acts relating exclusively to.....	98
Prior surveys and maps adopted.....	99
Further surveys authorized.....	99
Rights of prior lessees preserved.....	99
Exclusive right of occupation.....	100
Liability for trespassing.....	100
Record of leases.....	101
Commissioner, records, report, salary.....	101
Oysters to be taken in day time only.....	102
Penalty for violation.....	102
SHELL FISHERIES, BOARD OF	
(See Board of Shell Fisheries)	
SOUTHWEST LINE	
Closed season above line.....	70, 73
Closed season below line.....	74
Dredging below line by person other than lessee, misdemeanor	69
Established in Delaware bay.....	69
Lands above, not to be leased.....	12
STATE BOARD OF HEALTH	
Inspection of oyster and clam beds.....	41
Record of inspections.....	41
Selling from condemned bed, prohibited.....	42
Duty to inspect oyster and clam beds.....	56
Polluted beds to be condemned.....	56
Evidence of use for food.....	57
Pollution prohibited, rules and regulations.....	57
Right of entry, officials not to be hindered, penalty.....	58



STATE BOARD OF HEALTH—Continued		Page
Pleadings, practice, judgment, execution.....		58
Defendant may be imprisoned.....		59
Judgment against corporation.....		59
Injunction against violations.....		59
Appropriations .....		60
Repealer .....		60
STATE OYSTER COMMISSION		
(See Delaware bay and river)		

## T.

TONGERS	
How licensed .....	14
Citizenship of applicant.....	15
Privilege granted by license.....	15

## V.

VESSELS	
Forfeited if illegally used.....	35, 38, 41, 42, 45
How proceeded against and forfeited.....	25
Mechanically propelled, unlawful.....	40, 42
Mortgage on, to non-resident, unlawful.....	35
Must be owned by residents.....	35
Not to carry dredges.....	24
Licensed in Delaware bay.....	66















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